United States Court of Appeals

for the Second Circuit

APPENDIX

No. 76-4138

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

LOCAL 814, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

UNITED STATES COURT OF APPEALS
FILED
AUG 31 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ABS DUPLICATORS, INC.–1732 Eye Street, N.W.–Washington, D.C.–298-5537

PAGINATION AS IN ORIGINAL COPY

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the matter of: Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Case No.: 2-CB-5729

11.18.74	Charge filed
1. 6.75	Complaint and Notice of Hearing, dated
1/17.75	Respondent's Answer, dated
2.13.75	Regional Director's Order Rescheduling Hearing, dated
3.18.75	Regional Director's Order Reshceduling Hearing, dated
5. 6.75	Regional Director's Order Reshceduling Hearing, dated
6.17.75	Regional Director's Order Reshceduling Hearing, dated
8.12.75	Hearing Opened
8.12.75	Hearing Closed
12. 1.75	Administrative Law Judge's Decision issued
1.16.76	Respondent's Exceptions to the Administrative Law Judge's Decision, received
3.31.76	Decision and Order of the National Labor Relations Board, dated

COMPLAINT

3. Morgan is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2),(6) and (7) of the Act.

4.(a) Local 814 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

(b) Local 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 445 is, and has been at all times material herein, a labor organization within the meaning of Section 2 (5) of the Act.

5. Charles Agar and Anthony Gilberti are, and have been at all times material herein, business agents of Respondent, Local 814, acting on its behalf, and agents thereof.

6.(a) At all times material herein, Local 814 and Morgan have maintained in force and effect a collective bargaining agreement covering certain of the employees employed by Morgan.

(b) The most recent collective bargaining agreement between Local 814 and Morgan is for a term from April 1, 1974 to March 31, 1977.

(c) Article 13 of the aforesaid collective bargaining agreement between Morgan and Local 445 contains a union security provision requiring, as a condition of employment that all employees of Morgan covered by the agreement become and remain members of Local 814 on or after the 31st day of their employment or the effective date of the agreement whichever is later.

(d) Article 51 of the aforesaid agreement recuires, in substance that Morgan extend coverage of the agreement to any moving and storage company aquired by Morgan within the territorial jurisdiction of Local 814.

7.(a) In or about June 1974, Morgan purchased from J.H. Evans & Sons Inc., herein called Evans, a moving storage company located in White Plains, New York, the physical assets, goodwill, accounts receivable and other trade assets of Evans, including the White Plains facility.

(b) In or about June 1974, Evans ceased to operate the said White Plains facility and since in or about June 1974, and at all times material herein Morgan has operated said White Plains facility and has been engaged in substantially the same business operations formerly engaed in by Evans and has

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employed substantially the same employees and supervisors as had been employed by Evans.

3. Prior to the acquisition of the White Plains facility of Evans by Morgan, the employees of Evans employed at said facilty were members of or represented by Local 445 and at all times material herein, Local 445 and Evans maintained in force and effect a collective bargaining agreement covering such employees.

9.(a) On or about June 7, 1974 Local 814 by letter signed by Charles T. Martelli, its secretary-treasurer and agent, made a demand upon Morgan to recognize Local 814 as the collective bargaining agents for the employees formerly employed by Evans at the White Plains facility. The letter stated, inter alia,

> ... you are hereby notified that Local 814 I.B.T. considers the former Evans employees to be part of our bargaining unit and covered by our collective bargaining agreement.

(b) On or about June 7, 1974, Local 445 by letter signed by Theodore Daley its secretary-treasurer and agent made a demand upon Morgan that said employer continue to recognize Local 445 as the collective bargaining representative of the employees at the White Plains facility.

10.(a) By letter dated June 17, 1974, Local 445 by Theodore Daley requested that Teamster Joint Council No. 16, herein called the Joint Council, to consider and decide the dispute between it and Local 814 regarding which labor organization had jurisdiction over the employees at the White Plains facility.

(b) On or about September 6, 1974, the Joint Council ruled in favor of Local 814 and determined that Local 814 had jurisdiction over the employees at the White Plains facility.

11.(a) On or about October 16, 1974, Morgan executed an agreement with Local 814 wherein Morgan agreed to apply its collective bargaining agreement with Local 814 to the White Plains facility and employees acquired from Evans.

(b) Local 814 and Morgan executed and the aforesaid agreement, as described above in subparagraph (a), notwithstanding the fact that Local 814 was not at the time of the execution thereof, duly designated or selected as the collective bargaining representative by a majority of the employees covered by

such agreement.

12.(a) On or about October 17, 1974 Anthony Gilberti and Charles Agar, business agents of Local 814, told the former employees of Evans at the White Plains facility that they would have to join Local 814 and sign authorization cards for said labor organization. Said agents further told said employees that if they failed to join Local 814, that labor organiztion would replace them with members of Local 814.

(b) On or about October 25, 1974, Local 814 by letter signed by James V. Graeco its president, advised the employees employed at the White Plains facility, in substance, that they were required to become members of Local 814 as a condition of employment no later than 21 days from the receipt of said letter. The letter further advised that their failure to join Local 814 would cause said labor organization to require Morgan to discharge them.

13. By the acts described above in paragraphs 11 and 12, and by each of said acts, Local 814 restrained and coerced, and is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

14. By the acts described above in paragraphs 11 and 12 and by each of said acts, Local 814, has threatened to cause Morgan to discharge or discriminate against its employees, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(2) and Section 2(6) and (7) of the Act.

15. The acts of Local 814 described above in paragraphs 11 and 12, occurring in connection with the operations of Morgan described above in paragraphs 2 and 3, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 19th day of February 1975, at 11:00 a.m., at 26 Federal Plaza, Room 3614, in the City and State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise and give testimony.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SECTION 2

LOCAL 814, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA
(MORGAN AND BROTHERS-MANHATTAN STORAGE CO., INC.)

and

ROBERT DRYERS

CASE NO. 2-CB-5729

ANSWER

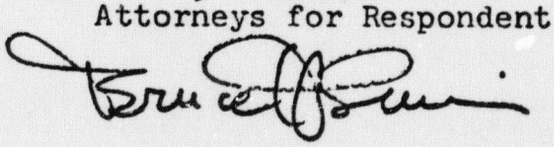
Local 814, I. B. T., by its attorneys, COHEN, WEISS and SIMON, answers the complaint as follows:

Denies paragraphs 11)b); 13; 14.

Admits paragraph 6(c) on the assumption that the reference to Local 445 is a typographical error, and that reference to Local 814 was intended .

WHEREFORE, Respondent demands that the Complaint be dismissed.

COHEN, WEISS and SIMON
Attorneys for Respondent



OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

National Labor Relations Board

DOCKET NO. 2-CB-5729

IN THE MATTER OF:

MORGAN AND BROTHER-MANHATTAN STORAGE CO., INC.

PLACE: New York, New York

DATE: August 12, 1975

PAGES: 1 - 82



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Official Reporters
300 Seventh Street, S.W. Washington, D. C. 20024
393-2320

BEFORE THE NATIONAL LABOR RELATIONS BOARD

----------x

In the matter of:

LOCAL 814, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA.

and

Case # 2-CB-5729

MORGAN AND BROTHER-MANHATTAN STORAGE CO., INC.

and

ROBERT DRYERS.

----------x

26 Federal Plaza
N.Y.C., New York.
August 12, 1975
11:00 A.M.

BEFORE:

LEONARD M. WAGMAN, Administrative Law Judge

Appearances:

MICHAEL L. LONDON, ESQ.,
Counsel for General Counsel
26 Federal Plaza, New York, New York.

COHEN, WEISS & SIMON, ESQS.,
Attorneys for Local 814, IBTCWHA
605 Third Avenue
New York, New York
BY: BRUCE H. SIMON, ESQ., of Counsel.

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
E. P. SADLER MORGAN	12	25	69	75

EXHIBITS

GENERAL COUNSEL	IDEN.	EVID.
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JUDGE WAGMAN: General Counsel Exhibit E through N is received in evidence.

(Documents referred to where marked General Counsel Exhibit E through N in evidence.)

JUDGE WAGMAN: Off the record.

(Discussion off the record.)

JUDGE WAGMAN: On the record.

MR. LONDON: I would like to amend the complaint, specifically paragraphs 6C to read Local 814 instead of Local 445, that being a typographical error.

MR. SIMON: No objection, as amended admitted.

JUDGE WAGMAN: Thank you.

MR. LONDON: On other matter.

JUDGE WAGMAN: Your motion to amend is granted. I appreciate the admission. Thank you.

MR. LONDON: I think Mr. Simon and I have reached a stipulation asto paragraph 11D of the complaint.

I would like to go off the record.

JUDGE WAGMAN: Off the record.

(Discussion off the record.)

JUDGE WAGMAN: On the record.

MR. LONDON: By letter dated July 30, 1975, Mr. Simon and I stipulated that paragraph 11D of the complaint would be admitted and that paragraph would read in essence:

That Local 814 did not possess on October 16, 1974 a majority of the authorized cards of the employees at the Evans facility at White Plains.

MR. SIMON: If I understand Mr. London is moving to amend 11D to reflect what he has just stated. That is so amended and is admitted.

JUDGE WAGMAN: The motion to amend is granted and the admission is noted.

What is left of the facts?

MR. LONDON: As I said before, this is the most responsive pleadings we have.

It is General Counsel's position that this is not an accretion and if it is, it is the board's practice to allow the employees the opportunity to choose a bargaining representative by a board erected election.

JUDGE WAGMAN: The only issue is that this is an accretion or separate appropriate unit, is that it?

MR. SIMON: Simplistically I will make a motion to dismiss.

I will make that either after general counsel has made its opening statement or when and if you would suggest.

JUDGE WAGMAN: You know under the EBA I have to write something, no matter what is happening, I have to make findings of fact.

MR. SIMON: Irrespective, you will hae a witness.

JUDGE WAGMAN: If these are the allegations and they are all admitted, then there is an issue --

MR. LONDON: There are some facts that would or would not support an accretion.

JUDGE WAGMAN: Well, then, does the compliaint have something in there about unit?

MR. LONDON: We are going into the underlying facts of the history of the case, that will not alter the facts that you may not have an accretion if there was an accretion.

JUDGE WAGMAN: If there is an accretion --

MR. LONDON: Mr. Simon's position simplistically or not is well taken and I don't have a white handkerchief to wave.

JUDGE WAGMAN: If it is a separate unit it goes the other way.

MR. SIMON: I just noticed one amendment to my answer, which I have just covered.

That is with reference to paragraph 7 of the complaint.

JUDGE WAGMAN: 7A?

MR. SIMON: We would move to amend our answer to admit that Morgan purchased from J. H. Evans & Sons certain of the physical assets and other assets and

certain of the other assets of Evans including --

May we go off the record?

JUDGE WAGMAN: Off the record.

(Discussion off the record.)

JUDGE WAGMAN: On the record.

MR. SIMON: Including part of the White Plains facility.

JUDGE WAGMAN: Let's see what does that do?

MR. LONDON: I don't know exactly what it does, if anything but I think we are still back to the issue you framed and I framed before. I don't think this changes it very much. I don't know if that is factually true.

Isn't there a successorship or anything involved?

MR. SIMON: Yes.

Why should we operate in the dark, in the first place we would move for a dismissal as we moved the General Counsel to voluntarily to withdraw its complaint because the charging party will lead to withdraw the charge. We can see very little in the way of the purposes and policies of the act to be furthered by continued prosecution of this action in a matter inimicalable to the interest of the employees who are now represented by Local 814 covered by Local 814's pension and welfare fund and receiving at least

choosing a representative.

JUDGE WAGMAN: I think that is what it is.

MR. SIMON: Spielberg was earlier --

JUDGE WAGMAN: I think Spielberg is 115.

MR. SIMON: 112.

JUDGE WAGMAN: The other is 122.

I have denied the motion.

We will go forward and find out as to what evidence there is in support of it.

MR. LONDON: Okay.

May we go off the record.

JUDGE WAGMAN: Off the record.

(Discussion off the record.)

JUDGE WAGMAN: On the record.

MR.LONDON: I call Mr. Morgan.

Whereupon,

E.P. SADLER MORGAN,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LONDON:

Q State your full name.

A E.P. Sadler Morgan.

Q Mr. Morgan, wouldyou tell the court what your present position is?

A I am the president of Morgan & Brother-Manhattan Storage Company.

Q How long have you had that position?

A Since 1970.

Q In the genetic sense what duties do you have in the capacity of president?

A I am in over-all charge of the operations and I guess for the interest of this case I am in charge of all labor relations having to do with the firm.

Q Would you tell the court the number of facilities operated at the present time by Morgan and Brother?

A Nine.

Q Specifically, how many facilities, moving and storage facilities, do you have in New York City?

A Five on the Island of Manhattan.

Q How many do you have outside the Island of Manhattan?

A We have four.

Q Where are those facilities located?

A One is in Rye, New York. Another is in White Plains, New York. Another is in Armonk, New York. And one in Greenwich, Connecticut.

Q Specifically, what are the general functions of each of these operations?

A Including the New York City ones, you don't

mind if I refer to notes, it makes it a little easier.

JUDGE WAGMAN: Any objection?

MR. SIMON: If I had, I would announce it.

A The New York operations --

Q Where are they located?

A 76 Varick Street is a record storage building.

510 West 23rd Street is a moving and storage building with emphasis on office moving.

1411 Third Avenue is moving and storage, the main offices of the company.

153 East 87th Street is the storage facility.

434 East 19th Street, another storage facility.

Q Could you tell the court briefly the difference between a storage facility and your other moving facilities?

A A moving facility would be a dispatch and operate trucks from the operation, whereas a storage facility would not necessarily have any trucks domiciled at the facility at all.

Q Now, could you tell the court the operations that you have outside of New York City?

A Well, in Greenwich, Connecticut, we have a moving and storage operation with an emphasis on export work.

In Armonk we have a long-distance terminal

and a machinery and export packing operation.

In Rye, New York we have a moving and storage operation.

In White Plains we have a moving and storage operation with some commercial.

Q Would it be fair to say that the White Plains facility is the previous J.H. Evans facility?

A Yes.

JUDGE WAGMAN: Off the record.

(Discussion off the record.)

JUDGE WAGMAN: On the record.

Q Do you have a collective bargaining contract and agreement covering the employees at each of these facilities?

A Yes, we deal with three seperate unions.

Q Would you tell the court the collective bargaining agreement that you have with the five operations in New York City?

A They are all under Local 814.

JUDGE WAGMAN: Off the record.

(Discussion off the record.)

JUDGE WAGMAN: On the record.

Q How long have you had collective bargaining agreements in New York City with 814?

A Since the union was established in 1920,

something or another.

Q Your facility in Greenwich Connecticut, is that under contract?

A Yes, it is under contract with Local 191, IBT.

Q How long have you had a collective bargaining history with 191?

A Since 1962.

Q Your facility in Rye, New York?

A Rye, New York is under bargaining agreement with Local 445 of the IBT since 1972.

Q Armonk, Westchester, do you have an agreement with the Armonk facility?

A Yes it is not a seperate agreement, it is with Local 814.

Q Is there any other employees that you are under contract with at the Armonk facility?

A We have 19 long distance trucks whose operators are members of Local 191 and the trucks are domicile there.

Q Do you have any 445 employees at the Armonk Westchester Plant?

A No.

Q Didn't you have it recently?

A At one time shortly after we took over the White Plains operation, one man from the White

Plains operation went to the Armonk place as a warehouseman and he is still there although he has changed union affiliation.

Q Genetically speaking, would you tell the Court what unit of employees are covered by the various collective bargaining agreements?

A They are all the same, chauffeurs, packers, helpers and warehousemen and checkers.

Q Do you recall when you purchased the Rye, New York facility?

A In April of 1972.

Q That is the one that is recently 445?

A That is correct.

Q Would you tell the court the conditions that led to your taking over the Rye facility?

A Well, these people wanted to get out of the business and I wanted to take over and we bought the corporation. In that particular case we bought the stock and everything.

Q Who had they been represented by?

A Who?

Q What union represented them?

A 445.

Q After you took over Rye, New York facility, you continued with 445, is that correct?

A We did, there were only three men in that particular group.

Q Did you partake in the negotiations that led to the purchase of the Armonk, J. H. Evans facility in White Plains?

A Yes.

Q Are you familiar with the negotiations that led to that purchase?

A Yes.

Q Would you tell the court what union represented the employees at the Evans facility prior to your purchase?

A 445.

Q Do you recall when you took over the purchase of the J. H. Evans facility?

A Yes.

Q When was that?

A June 1, 1974.

Q Prior to your taking over the Evans facility in White Plains, would you tell the court what type of operation existed at the White Plains facility, genetically speaking?

A It was a moving operation with moving and storage operation with some emphasis on commercial -- commercial or office moving which is exactly the description

which calls for it now.

Q Would you tell the court the number of employees that were working for the J.H. Evans facility at the time you took over their operation?

A There were approximately 18 men on the seniority list, 18 or 20 men.

Q How many other employees?

A Well, --

MR. LONDON: Strike that.

Q How many other personnel were working at that facility besides the 18 employees?

A The 18 employees were on the outside, on the inside they had two owners, a sales manager, a salesman, two bookkeepers and a dispatcher.

Q Subsequent to your take over at the Evans White Plains facility, how many of the original 18 employees did remain?

A The two owners and the sales manager the salesman -- the sales manager went to Florida.

MR. SIMON: I don't believe the witness is being responsive.

Q How many of the original 18 employees did you retain?

A All of them.

Q How many of these other personnel that you

described continued at the operation?

A I am sorry, the only one that remains now that was an Evans employee is the dispatcher.

Q Is that in addition to the regular 18 employees?

A Yes.

Q Would it be fair to say that for the two owners and the bookkeeper and the sales manager departed?

A And the salesman, that is correct.

Q Subsequent to your purchase of the Evans White Plains facility, what if any changes were made as to (A) the type of work that that facility is now performing?

MR. SIMON: Objection, I don't believe it has been established as to the fact that the White Plains facility was purchased. I think we might do with some foundation material about the nature of the purchase.

MR. LONDON: All right.

Q Would you tell the court --

JUDGE WAGMAN: Sustained because we had an admission of certain assets only.

Q Would you enlighten the court as to your take over of the Evans facility?

A We purchased some of the assets of the building at 205 Ferris Avenue, the trucks. I am trying to think now.

We bought the name for the purposes of the first year of our advertising until the Red Book expired and certain other equipment and the storage accounts.

Q And the what?

A Storage accounts. We did perhaps, to clarify it a bit, we did not buy certain other assets of the corporation such as a building in Pleasantville which the corporation maintained, such as certain other trucks that we were not interested in. The accounts receivable we did not buy, we collected them but we did not purchase them, we collected them for the seller.

Q Are you presently operating a moving facility at the former J.H. Evans site?

A Yes, at 205 Ferris Avenue.

Q Subsequent to your take over of the J.H. Evans facility or purchase of the J.H. Evans operation or parts of the operation, what if any changes were made as to the typr of work presently being performed?

A None.

Q Were there any physical or capital changes that were made subsequent to your purchase of the Evans facility?

A We repainted the trucks to the Morgan colors supplied them with materials that were printed with our name and cartons, et cetera. We did some repairs

on the property, physical repairs. Basically no, everything was the same.

Q Essentially what is it that you purchased from J.H. Evans?

A What did we purchase?

Q What?

A We just described it before, the building at 205 Ferris Avenue, some of the rolling stock, the trucks, the storage accounts, the pallets.

Q What are the pallets?

A Pallets are the containers which the household goods are put for storage plus a walk-up and incidental equipment.

Q Is there any interchange between the employees of the former J.H. Evans facility, with any employees with your Morgan branches in Westchester?

A Yes, a good deal.

A 25 week study shows that the average, it averaged that there were eleven Evans personnel supplied, eleven man days of work to other branches in the Westchester area and the recripocal, approximately two man days each week was supplied to the other branches to the White Plains operation.

Q When you say the Westchester area, does that include the Greenwich, Connecticut location?

A Really, probably 90% of that exchange of Labor was done in the vicinity of Westchester.

Q Does this interchange vary upon season?

A Yes.

Q When is it at its greatest percentage?

A During the summer.

Q Is there any other contact between the Evans employees and yourother facilities in Westchester and Connecticut employee contact?

A Well, they made a writing to each other, I don't know but as far as we are concerned we dispatched the men. If they need additional men at one branch or another that is what we feel is the origin of most of the contact.

Q In that dispatching, is what you just mentioned before on a per month basis, is that correct?

A What?

Q That dispatching you mentioned, what you mentioned before of that per month, what you read before?

MR. SIMON: Objection, I don't believe it was per month.

A It was per week.

MR. SIMON: I think the witness' answer was unclear, I was going to deal with it on Cross.

It might be useful for the reader of a record to clarify it. I believe with respect to the eleven man days the witness did not indicate within what period of time the eleven man days referred. With regard to the two man days he indicated it was two man days per week, it may not be my place --

JUDGE WAGMAN: It is okay.

A Eleven man days per week, an average of eleven man days per week was supplied by White Plains to other branches.

Q How many man days per week were supplied by the other branches to White Plains?

A Two man days per week.

Q I would like to direct your attention to the geographical location to the White Plains facility. How far is it from Armonk?

A Two to three miles.

Q How far is it from the Rye facility?

A Seven to nine miles.

Q How far is it from your Greenwich facility?

A About eleven miles.

Q How far is it from your New York facility?

A Perhaps sixteen or seventeen miles.

Q Are the skills required at the Evans facility similar to the skills required at your other

Westchester facilities?

A Basically yes, perhaps the Armonk facility has some export packing which is a little more carpentry oriented basically.

Q Are the same skills required at your Greenwich facility?

A Yes.

Q The hours and shifts of the employees that they work, are they similar?

A They are the same.

Q How are they determined?

A Well, the contract leads 8 to 5 in all three contracts and that has the shift that we use.

Q So it would be fair to say all three contracts require the same basic hours and shifts?

A Yes.

Q Does the Evans facility rely on or require the service of any of your other facilities to perform their day to day operation?

MR. SIMON: Objection. I thought we agreed to refer to the White Plains facility.

JUDGE WAGMAN: I don't think there was any agreement, there was a disagreement.

MR. SIMON: I would ask it be called the White Plains facility.

JUDGE WAGMAN: I think it is interchageable, overruled.

A Would you rephrase the question?

MR. LONDON: My question will stand.

A This operation is self sufficient to a certain extent, although the melding with the Morgan operations have increased its capacity. There are facilities and equipment that Morgan has that the Evans operation did not have.

Q Specifically or genetically, can you elaborate on that?

A Equipment for hoisting, winch equipment on the trucks for moving heavy items or for puting things through windows where the door was or are to small, that sort of thing.

The facility for moving export containers, large fork trucks, this other thing they had, small ones and we have large ones. We did in fact increase their ability to serve in the way that we're expected to serve in the industry.

Q Would you tell the court who the officers of the Morgan Brother Company are?

A Well, there are five officers to the company.

The chairman of the board is Charles D. Morgan.

I am the president.

John V. Morgan is the vice president.

Arthur J. Morgan is the secretary.

Charles S. Morgan is another vice president.

Q Briefly, what are the functions of the various officers that you just mentioned?

A Well, Charles D. Morgan is the chief administrative officer.

I am in charge of problems.

John V. Morgan is in sales.

Arthur J. Morgan is in sales and manages the Rye operation.

Charles S. Morgan is the branch manager at Armonk and is in charge of the long distance operation.

Q Where are the administrative offices located?

A 1411 Third Avenue.

Q What departments are located at the administrative offices?

A Well, bookkeeping, accounting, advertising, purchasing, payrolls, all of the administrative departments of the company.

Q Where are the time records and the vacation records kept?

A The basic payroll is kept by a computer at the 80th Street operation.

However, ancillary records are kept at the branch because the Department of Labor requires it.

Q Who negotiates the collective bargaining agreements with the various unions?

A I do.

Q In each of the various utilities in Westchester, who runs the day to day operation?

MR. SIMON: Objection, your Honor.

It is too generally phrased.

JUDGE WAGMAN: Who runs the day to day operation at each facility?

Who is in charge of each local. is that what you mean?

MR. SIMON: I think we ought to deal with what it is at the various locations, what the various people do, we had no description as to who is in charge in terms of identifying the corporate officers and I think there is an element of confusing conclusory nature in that question.

JUDGE WAGMAN: For one thing I think you have to find out as much as possible about the local operations.

We have had testimony about the corporate officers and so I think we need something about how each facility operates, the extent of its operation, if any, you know.

MR. SIMON: I am suggesting a question simply asking who is in charge for the reason of soliciting

the information togive you and the board the basis on which to make a decision.

JUDGE WAGMAN: The words "in charge" I think are sufficiently clear.

I overrule the objection.

MR. LONDON: Thank you.

Q Let's specifically go to the Greenwich, Connecticut operation.

Who leads that operation for Morgan Brothers?

A The manager of that operation is Bob Clark.

Q Your Armonk operation?

A Charles S. Morgan.

Q Your Rye facility?

A Arthur J. Morgan.

Q Your Evans facility in White Plains?

A John Offawaard.

Q Your operation at 76 Varick Street?

A John D. Morgan.

Q Your operation at 510 New York?

A 510 West 21st Street is Phil Samon.

Q 1411 3rd Avenue?

A Well, Alex Failarge.

Q 153 East 87th Street?

A Me.

Q 91st Street for storage?

A Paul Sealeppe.

JUDGE WAGMAN: All these are New York City?

MR. LONDON: Yes.

I will clarify that.

Q The last five we discussed, are all these your New York operations?

A Yes.

Q What are the functions of the various managers that you just mentioned?

A Well, they are in over-all charge of the operations of their branch, taking into account that the residue is rather small so we have taken out all the administrative services.

There is no accounting, bookkeeping, payroll, but they are in charge of the physical well-being of their plants.

We manage basically by exception, meaning when everything is fine, we don't hear from the manager.

If he needs us, he calls us. That is the exception. He is in charge of the salesand whatever has to go on in that particular branch.

Q What specifically speaking, what is it that each of these branch managers have to do as part of their functions?

A They are in charge of the branch. They make sure

that the dispatcher is not wasting help.

They make sure that the buildings are kept clean and the roofs don't leak and the customers are kept happy when they come in and want to have access to their goods.

This is the function of a manager.

Q Is there any hiring done at these specific branches?

A The only hiring that is done is the day to day employment of the union help and that is done really by the dispatcher.

Q What about lay-offs at these specific facilities?

A That is done by the dispatcher and strictly according to the work load which is specifically in our contract.

Q As to suspension and discharge, who takes care of suspension?

A I do.

That we consider as part of labor relations and it is my function to oversee all of that.

Q Would it be fair then that you handle all suspensions and discharges for all your New York City, Westchester and Connecticut operations?

A Yes, that is accurate.

I don't know howfair, but it is accurate.

Q Where are the grievances at these specific branches

handled?

A Well, grievances that are not handled effectively at the shop steward level then come to me.

I get involved in resolving the dispute, hopefully.

Q The initial grievance is then held by the local shop steward?

A Yes.

He would come in and say to the manager such and such is going on.

If it can be resolved there, that is what is done.

Q Can each of the local managers hire employees?

A Well, I think that our industry that happens to be an ambiguous term, when you put a man on, when you are busy and you put on additional men from your seniority list, that could be hiring.

In that matter, the dispatcher would hire; if you mean putting on a permanent employee from nowhere, no. He does not do that.

Q Who makes the decision to put on employees, the dispatcher?

A On a day to day basis.

Q Do you have any non-union employees employed at your facilities?

A At the office.

Q Do you hire any non-union summer help at the local

levels?

A On rare occasions.

Q Who makes that decision?

A Well, the dispatcher generally would ask some of the men, do you have a friend that can come in and work tomorrow.

Q That would be done at all of the local facilities during the peak season, or the summer season?

A Yes.

I must say there is an extremely rare occasion because we have so many men available on our seniority list.

Q In the event that is needed, additional help is needed and the seniority lists are --

A We call it exhausted.

Q Who makes the decision to hire those additional employees?

A The dispatcher.

Q Is the dispatcher directly under the branch manager and in control of the operation, control of the operations?

A Yes.

Q One further question:

When you talked about employee interchange before, you were speaking about interchange between Evens and Rye, is that correct?

A Yes.

Q Armonk?

A Yes.

Q Greenwich, Connecticut?

A Yes.

Q Is there any interchange between the Evans facility and the five New York City locations?

A Yes, but not quite as directly.

It is quite common for us, if we load a truck in New York City today and it is to be delivered geographically close to the White Plains operation tomorrow, only a driver and a helper will leave New York and they will pick up any additional help they need from the White Plains operation.

The opposite is true. If they come into New York they bring in a driver and helper and the balance of the men would be from the geographically closest location.

Q Do any other employees ever physically move from the J. H. Evans facility in White Plains to any of your five locations in New York City?

A No.

Q However, that is not the case as to their physically moving within Westchester and Connecticut?

A That is true.

We do have one employee as mentioned before that

went from the White Plains operation to the Armonk operation on a permanent basis.

MR. LONDON: I have no further questions.

JUDGE WAGMAN: Mr. Simon?

MR. SIMON: Before I commence, what I still believe would be an unnecessary cross-examination, I renew my motion on the basis of general counsel's case.

JUDGE WAGMAN: As I say,I have to study the matter. I will not make a ruling, so the motion is denied.

CROSS-EXAMINATION

BY MR. SIMON:

MR. SIMON: I think you have almost all of these.

MR.LONDON: I don't know what I have or not.

Q Mr. Morgan, would you identify this document?

JUDGE WAGMAN: You ought to mark it first.

MR. SIMON: Mark this Respondent's Exhibit 1 for identification.

(Document marked Respondent's Exhibit 1 for identification.)

Q Mr. Morgan, is this a letter you received from Mr. Martelli within a day or two after June 7,1974?

A It is.

MR. SIMON: I move that it be admitted.

JUDGE WAGMAN: Any objection?

MR. LONDON: I object.

I am receiving it in evidence as series of verbal acts or statements which provoked conduct or perhaps another letter or something on behalf of Mr. Morgan or the witness and therefore I am receiving respondents Exhibit 1 on those conditions.

(Respondents Exhibit 1 was received in evidence.)

MR. SIMON: I ask this be marked for identification as respondents Exhibit 2.

(Respondents Exhibit 2 was marked for identification.)

Q Mr. Morgan is this a letter dated June 7th, 1974 marked for identification as respondents 2, union Exhibit 2, a letter you received shortly after the date from Local 445 of the teamsters?

A Yes.

MR. SIMON: I ask it be received as respondents Exhibit 2.

JUDGE WAGMAN: Mr London?

MR. LONDON: I object to it, the same basis.

JUDGE WAGMAN: It is hearsay?

MR. LONDON: Yes.

JUDGE WAGMAN: It is a demand.

MR. LONDON: By Ealey.

JUDGE WAGMAN: It has Local 445.

MR. LONDON: I admit for the purposes you mentioned and it states exactly what we mentioned in paragraph 10E of a complaint.

JUDGE WAGMAN: As far as the business about the merger.

MR. LONDON: Nine B of that complaint.

JUDGE WAGMAN: I will receive respondents Exhibit 2 in the same manner as I received respondents number 1, as some assertion of fact which cannot be made subject to cross examination. You see he used the word merge. I don't know, this is a merger, I understood there was an acquisition.

MR. SIMON: I think to the extent it should be admitted as stating the position of Local 445.

MR. LONDON: I agree with that.

JUDGE WAGMAN: We are receiving respondents 2 and that is that.

MR. SIMON: Mark this as respondents Exhibit 3 for identification.

(Respondents Exhibit 3 was marked for identification.)

Q Mr. Morgan, Ishow you respondents Exhibit 3 for identification which is a letter dated June 11th, 1974 with your signature.

Did you in fact send that letter to Mr. Martelli?

A Yes.

MR. SIMON: I ask it be received as respondents Exhibit 3.

JUDGE WAGMAN: Do you have a copy Mr. London?

MR. LONDON: Yes I do.

I have no objection.

JUDGE WAGMAN: Respondents 3 is received in evidence.

(Respondents Exhibit 3 was received in evidence.)

Q Mr. Morgan, in your letter of June 11th received in evidence as repondents Exhibit 3, you state to Mr. Martelli that "your letter of June 7th,1974 has arrived this date in our offices."

The letter is essentially correct in most respects, is that correct?

A That is correct.

Q I show you respondents Exhibit 1 and I will ask you some questions with regard to that.

Mr. Martelli states in respondents Exhibit 1, his letter to you of June 7th, 1974 "we understand that you have recently purchased the assets of Evans Moving and Storage Inc."

Under direct examination you testified to the extent to which you had purchased the certain assets of Evans Moving and Storage Inc., is that correct?

A That is correct.

Q Mr. Martelli then states that "we further understand that you are merging the Evans operation into your operation in Manhattan covered by our collective bargaining agreement."

Did you merge the Evans operation into your Manhattan operation and if so to what extent?

A Not really to the Manhattan operation but it was melded into the overall operation of the company. Only Manhattan becomes a geographical term, which is the neccessary proper.

Q It was merged into the overall Morgan Brother Manhattan operation?

A Yes.

JUDGE WAGMAN: Are you talking about the Borough of Manhattan or the name?

MR. SIMON: The letter states what it states. I believe the witness' answer, his response is to the name of the company which is Morgan Brother Inc.,

A In this paragraph, Brother, it says with the Manhattan operation, if it is geographical, Manhattan, it really is not melded when it is in the company. It is melded in the general company.

JUDGE WAGMAN: To the same degree that the Armonk operation was part of the operation?

A That is correct.

Q Mr. Martelli states "that the work performed by and the job skills covered by our contract."

He is referring to Local 914's contract, is that correct?

A That is correct.

Q Mr. Martelli later states "that the former Evans Trucks have been repainted as Morgan Trucks."

Is that correct?

A At this time it is correct.

JUDGE WAGMAN: The question is, this Mr. Simon, when the witness says that's correct is he talking about did Mr. Martelli say that?

MR. SIMON: No. Whether the statement reflects the it, all of my questions have been addressed to that.

JUDGE WAGMAN: I know , we are always. Is it a fact, as Mr. Martelli stated "that the former Evans Trucks have been repainted as Morgan Trucks."

A That is correct.

Q Is it a fact that "that the former Evans Trucks will be interchanged with the Morgan Trucks"?

A It is correct.

Q Is it a fact and stated by Mr. Martelli "that the former Evans employees will be interchanged with the Morgan employees"?

A That is correct.

Q Is it a fact that various -- as stated by Mr. Martelli "that various of the former Evans employees will report to and operate from your Manhattan locations and vice versa regarding the MOrgan employees"?

A That is not correct.

Q Is it a fact as stated by Mr. Martelli "that those groups are employees will service the same accounts work for the same supervisors, be subject to the same labor relations policies and will be paid from the same office and out of the same bank accounts"?

A That is correct.

Q Is it a fact as Stated by Mr. Martelli "that there will be centralized and common control of the entire operation"?

A That is correct.

Q Mr. Morgan, subsequent to your letter of June 11th to Mr. Martelli in evidence as respondents Exhibit 3, were you informed that Local 445 and Local 814 were going to have the question of jurisdiction over the former Evans employees determined by the teamsters during council number 16?

A Yes.

Q Did you speak to Local 814 and Local 445 and agree with them that you would be bound by the determination

of the joint council number 16?

A Yes.

MR. SIMON: Mark this Respondents Exhibit 4.

(Respondents Exhibit 4 was marked for identification.)

Q I show you Respondents Exhibit 4 for identification which is a letter to Mr. Trerotola from Mr. Ealey secretary treasurer 445, dated June 17th, 1975 and ask you if you subsequently received a copy of that letter?

A Yes.

MR. SIMON: I ask it be received as Respondents Exhibit 4 in evidence.

MR. LONDON: I object to the introduction of that letter, other than the fact he received the document.

JUDGE WAGMAN: Mr Ealey is a representative of 445?

MR. SIMON: That is correct.

JUDGE WAGMAN: I will receive this letter as again verbal acts which in a sense this is a copy of this letter which came into the possession of respondents and respondents did something.

MR. LONDON: He is not respondent.

JUDGE WAGMAN: The company did something or did not in accordance with this letter.

MR. LONDON: I said I admit it adds to the fact he

saw a copy of this letter, period.

JUDGE WAGMAN: It is received for that purpose.

(Respondents Exhibit 4 was received in evidence.)

JUDGE WAGMAN: Is there any chance of making this shortened.

MR. SIMON: I will put it all in, let it all hang out.

MR. LONDON: The real question Mr. Simon is not that question, that it goes all in, it is what it goes in as and I would state to you I agree there was a letter written, period, that is what is going to go in for. It does not go in as to any over riding truth.

MR. SIMON: Are you contesting he is asking for a hearing?

JUDGE WAGMAN: The letter does state there is a request by Local 445.

MR. LONDON: I admit there was a hearing and a decision.

JUDGE WAGMAN: This letter does indicate there was, somebody says he was asking, he will ask for a hearing.

MR. LONDON: There was a hearing.

MR. SIMON: We will get to that.

JUDGE WAGMAN: The question to that Exhibit, did the letter, does this letter now come for all purposes?

MR. LONDON: No it does not.

(Discussion off the record.)

JUDGE WAGMAN: On the record.

MR. SIMON: Would you mark this letter of September 13th 1974 as Respondents Exhibit 5A and the letter dated September 6th, 1974 as Respondents Exhibit 5B.

(Respondents Exhibit 5A and 5 were marked for identification.)

JUDGE WAGMAN: Off the record.

(Discussion off the record.)

JUDGE WAGMAN: On the record.

In the off record discussion we attempted to work out a stipulation to the admission of Respondents Exhibits what have been identified as 5A and 5B and we were satisfactory --

MR. SIMON: Partially.

Q I show you Respondent's 5A and 5B and ask you if you received these documents from Mr. Bracco, the president of Local 814

A Yes, I did.

MR. SIMON: At this point I would ask Mr. London to acknowledge that Respondent's Exhibit 5B for identification is the decision rendered by Joint Council 16.

JUDGE WAGMAN: Mr. London, would you respond to

Mr. Simon, please?

MR. LONDON: I so admit.

MR. SIMON: I ask that the document be received in evidence.

JUDGE WAGMAN: 5A and 5B are received in evidence.

(Respondent's Exhibits 5A and 5B were received in evidence.)

MR. SIMON: I ask that this be marked as Respondent's Exhibit 6.

(Document marked Respondent's Exhibit 6 for identification.)

JUDGE WAGMAN: We will take a 15-minute recess at this time.

I expect when I come back we will be able to shorten this thing.

(Recess taken at 1:00 p.m.)

JUDGE WAGMAN: On the record.

What has happened?

MR. SIMON: I am sure --

Let me seek to introduce additional evidence.

JUDGE WAGMAN: Apparently you have not worked out any kind of arrangement.

We were up to Respondent's 6.

MR. SIMON: General Counsel has seen what we intend to receive.

JUDGE WAGMAN: Do you have any specific objections to specific documents?

MR. LONDON: As I told you before.

JUDGE WAGMAN: Let's see, are there any you are willing to let in?

MR. LONDON: Yes.

JUDGE WAGMAN: Would you point them out?

MR. LONDON: That this is a clause of the contract.

JUDGE WAGMAN: We have Respondent's 6 for identification.

MR. SIMON: Correct.

JUDGE WAGMAN: We have disposed of that.

Have you seen Respondent's 6?

MR. LONDON: Is that the October 4th letter?

JUDGE WAGMAN: Yes.

Do you have any objection to that? All it really is is a proffer of an agreement.

It was proffered and became an agreement when it was signed.

MR. SIMON: That is correct.

MR. LONDON: Is this the document we are talking about?

MR. SIMON: Yes.

I believe we have a stipulation that the letter dated October 4, 1974, which is signed by Mr. Morgan and has been identified as Respondent's Exhibit 6 is the agreement

referred to in paragraph 11A of the complaint.

With that understanding I believe it can be received in evidence.

Is that correct?

JUDGE WAGMAN: That would therefore mean you would amend your complaint to show instead of October 16th, it would be October 4th?

MR. LONDON: We are not sure when it was signed.

JUDGE WAGMAN: It is on or about, do you have that stipulation?

MR. LONDON: That is correct.

JUDGE WAGMAN: The stipulation is received.

Respondent's 6 is received.

MR. SIMON: I believe we also have a stipulation that on March 14, 1975 the charging party wrote to the regional office as follows:

"This letter is to inform that Iam dropping my charges against Local 814 of the International Brotherhood of Teamsters. Thank you for your help in the past but I have reached my decision not to continue the case."

I ask that this document be identified as Respondent's Exhibit 7.

I believe we have a stipulation that Respondent's Exhibit 7 for identification, letter dated December 9, 1974 to Mr. Martelli from Mr. Daly of Local 445 was

in fact sent and received as indicated, that Mr. Morgan received a copy and that the letter represents the position of Local 445.

JUDGE WAGMAN: That stipulation is received and Respondent's 7 is received in evidence.

(Respondent's Exhibit 6 was received in evidence.)

(Respondent's Exhibit 7 was received in evidence.)

MR. SIMON: May I have this marked as Respondent's Exhibit 8 for identification.

(Document marked Respondent's Exhibit 8 for identification.)

MR. SIMON: I believe we have a stipulation that Respondent's Exhibit 8,an excerpt from the collective bargaining agreement between Local 814 and Morgan Manhattan Brother and I would ask it be received for paragraph 51 thereof.

JUDGE WAGMAN: All right.

Mr. London, do youhave any objection?

MR. LONDON: No.

JUDGE WAGMAN: I will receive this, and this is marked Respondent's Exhibit 8, pages 82 and 83.

Is this a current collective bargaining agreement between Morgan and Brother -- is it Morgan and Brother?

THE WITNESS: One brother.

JUDGE WAGMAN: Morgan and Brother and Local 814?

MR. SIMON: Yes.

JUDGE WAGMAN: There is no cover on this. We have to get clear what it is.

That is received.

(Respondent's Exhibit 8 for identification was received in evidence.)

MR. SIMON: I ask this be marked for identification, as Respondent's Exhibit 9.

(Document marked Respondent's Exhibit 9 for identification.)

MR. SIMON: I believe we have a stipulation that Respondent's Exhibit 9 consists of 4 pages of excerpts from the constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

I ask it be received.

JUDGE WAGMAN: Mr. London, any objection?

MR. LONDON: No.

JUDGE WAGMAN: It is received.

(Respondent's Exhibit 9 for identification was received in evidence.)

MR. SIMON: I ask this be marked as Respondent's Exhibit 10.

(Document marked Respondent's Exhibit 10 for identification.)

Q Mr. Morgan, I show you Respondent's Exhibit 10 for identification and ask whether this is the form of arbitration award issued by the Local 814, Moving and Storage Joint Labor Management Board on December 5, 1974.

A That is it.

Q Were you present before the Joint Labor Management Board on December 5, 1974?

A Until it went into executive session, yes.

Q Mr. Morgan, the Local 814 Moving and Storage Joint Labor Board is a bi-partisan type panel consisting of an equal number of representatives from employers covered by these same multi-employer collective bargaining agreements with Local 814 and union representatives sitting as an arbitration panel under that agreement, is that not correct?

A That is correct.

Q That panel under that collective bargaining agreement has the authority and in fact does issue arbitration awards with reference to disputes arising between Local 814 and employers covered by the agreement, is that not correct?

A That is correct.

Q Is it not a fact that the procedures followed by

the Joint Labor Management Board consists of notice to the parties to this dispute setting down the matter for hearing as its first step?

A Yes.

Q And followed by a hearing before the panel at which the union and the employer or employers involved appear, present evidence, state their arguments, in support of their positions, is that true?

A Yes.

Q Is it not a fact that on December 5, 1974 in connection with the union complaint that your company was not applying the collective bargaining agreement to the White Plains facility, that the Joint Board heard evidence in connection with that dispute and rendered a decision?

A That is correct.

Q Did you appear at that hearing?

A I did.

Q Did you present evidence?

A I did.

Q Did the union appear at that hearing?

A They did.

Q Did it present evidence?

A It did.

Q Was part of the evidence presented by the union

Respondent's Exhibit 1?

A Yes.

Q And Respondent's Exhibit 3?

A Yes.

Q Respondent's Exhibit 5B?

A Yes.

Q In addition was there evidence submitted by you and by the union concerning your operations at the White Plains facility?

A Yes, there was.

Q You have, as a member of that panel on a number of occasions, sitting as an arbitrator?

A I have.

Q For how many years?

A More than ten, I believe.

Were the proceedings on December 5,1974 fair and regular as you have understood them to be during your stint as arbitrator on the panel?

A Yes.

Q Now, as the representative of your company, did you accept the determination of the panel as final and binding an arbitration award under the collective bargaining agreement?

A Yes.

current and we submit in a case of that nature it should be submitted by the board --

JUDGE WAGMAN: We have testimony as to the nature and the quality of the proceeding as far as he knows, so I will receive Respondent's Exhibit 10 into evidence.

(Respondent's Exhibit 10 for identification was received in evidence.)

Q Mr. Morgan, does your company keep any separate profit and loss records with respect to the White Plains facility?

A No.

Q They are incorporated within the entire operation?

A There is one statement for the entire operation.

Q Your company operates under tariffs filed with New York State and with the Interstate Commerce Commission, does it not?

A That is correct.

Q Are separate tariffs filed for the White Plains location?

A No, they are not.

Q Is there a single tariff covering all operations of the company located in New York State?

A There is.

Q Is there a separate tariff covering the Connecticut operation?

A There is.

Q Does the company maintain any separate stationary identifying the White Plains location as a separate entity?

A No, there is a small type on the letterhead of any mail that goes out of the White Plains operation that says in reply addressed to 201 Ferriss Avenue, White Plains New York, it is the same corporation.

Q Is it addressed to Morgan Manhattan?

A That is correct.

Q How is the telephone answered at the White Plains facility?

A Morgan and Brother.

Q Are there seperate billheads for the White Plains facility?

A No, all the billing is done out of the 80th Street or the 1411 area.

Q That billhead is Morgan Manhattan?

A That is correct.

Q Is there a seperate bank account maintained for the White Plains facility?

A No.

Q Or Morgan Manhattan?

A It is all Morgan Brother Manhattan Storage.

Q Is there any distinction made with respect to

reports and contributions filed with you, with Local 814's pension and welfare fund with respect to the employees at the White Plains facility?

A No they are mailed in with the others.

Q That is all other 814 employees?

A Yes.

Q Is that true for all payroll as well?

A Yes for all payroll as well.

Q Does the company advertise seperately with respect to the White Plains location?

A No, the one exception would be that in the yellow pages there is one on the Morgan Brother Manhattan Storage Company display ad, there is a small box that says succesor to J.H. Evans and sons.

Q That is in the Westchester directory?

A Yes.

Q What authority, if any, does the White Plains manager or dispatcher have with respect to the labor relations of your company vis-a-vis Local 814?

A None, my instructions are the only question they are able to answer to a delegate is where is the mens room. All others come to me.

Q When you testified earlier that either the dispatcher or the branch manager at the White Plains facility in effect can hire employees with ambiguity

you noted with respect to that question, do I understand by hire in that context you mean only that he on a -aily basis employs persons already on the seniority list of the company in their seniority order in accordance with the company?

A That is correct.

Q Similar with respect to lay-offs, do I understand your testimony with regard to the authority of the dispatcher or the branch manager to be limited to the fact that on a given day there is no work available for employees on the seniority list they will not be employed?

A That is correct.

Q In the event there were to be any permanent termination, or lengthy lay-off of any employee at the White Plains facility, who would make that determination?

A I would make the decision.

Q Is that similarly true with regard to the imposition of any disciplinary action imposed upon any White Plains facility employees that you would make that decision?

A Correct.

Q Prior to the purchase by Morgan Manhattan of the White Plains facility, is there work which now would be performed by the employees out of the White Plains facility which would have been performed by the employees

out of your Manhattan facilities?

A Yes.

JUDGE WAGMAN: Which part did you answer?

MR. SIMON: I think it is a simple question.

The White Plains employees are now doing work which formerly would have been done by White Plains employees.

Q What kind of work do you refer to?

A One would be, we did an office job for Harcourt Brace and Gecvanovich Book Publishers, we have been down there working for years and they moved an operation from Pleasantville down to New York City. This was a job that required thirteen to fifteen trucks and we used the trucks from White Plains New York City. I think we used a truck from Rye and perhaps a couple from Greenwich.

Q Who would have performed the bulk of that work if you had not had the White Plains facility at that time?

A New York.

Q Are there also moves either originating or taking place within areas such as the Bronx or Yonkers or Bronxville which are today performed by the White Plains facility employees which prior to your purchase of certain assets in White Plains could have been performed by Manhattan facility employees?

A Yes.

Q Is that all the work in that geographical area?

A Yes, as I stated before the dispatch is done in every case on the basis of the best effective system as to the geographical facility on these jobs. Jobs booked from White Plains to White Plains, even if the contracting company is New York, the work is done by the White Plains company.

Q Before your having a White Plains facility --

A Then the closer geographical company would have done it, then it would have been somebody far away.

Q If it was in the Bronx or Yonkers?

A Then it would have been a New York operation.

Q Is there work which is booked out of your Manhattan offices which is performed by White Plains employees?

A A good deal of it.

Q Is there work which is booked out of a Westchester facility which is performed by New York employees, New York City based employees?

A Yes.

Q Is there work which your company undertakes which involves an amalgamation of employees from various of your Manhattan and Westchester locations including White Plains?

A Yes, as a matter of fact there are trucks that load in New York City that are to be delivered the following day in the suburb pick up their help for unloading at the geographically closest warehouse.

The opposite is true, trucks loading in the suburbs for New York City delivery would do it the way by picking up help from a New York operation.

Q Did you have occasion during 1975 to confer with a union representative concerning the vacation entitlement of the White Plains employees?

A Yes.

Q With whom did you have that discussion?

A Charley Agar.

Q Who is that?

A Chaley Agar is a representative of 814 who is an ex employee of Morgan Manhattan.

Q He services your shop?

A Yes, the feeling is the comunication is better.

Q Would you describe that, what that conversation had reference to?

A The coversation had reference to the fact that the several of the White Plains employees were interested in taking vacation because we were somewhat slow and due to the fact we were slow these people had not had the proper number of days of work that are required to

qualify for vacation time.

Charley Agar asked me if I would waive for the time being this requirement of a hundred days of employment in order to qualify for a vacation, which I agreed to do.

Q Is that the kind of problem that Mr. Agar would come to you in connection with White Plains employees?

A That is correct.

Q Did you have a conversation with Mr. Agar concerning the unemployment problem in the White Plains location?

A I did.

Q What was that conversation?

A He said that he thought he could obtain employment for some of these men on a part time basis with some other employees with the Westchester area and he asked if I would have objection to these men being so employed. I said at that time I did not mind and in fact endorsed his operation.

Q Do you know whether or not employees of your White Plains facility obtained employment through Local 814 and other employers in the moving and storing business?

A Yes.

MR. LONDON: I object.

JUDGE WAGMAN: Sustained.

MR. LONDON: I move to have the last question

struck.

JUDGE WAGMAN: No, the point is that certainly it is irrelevant, you capture the ground and you show your ability to use it. Lets go into what I want to know. I am not interested in how well 814 is doing. I want to know how it got there and why it is there and why whether or not this is an accretion or seperate unit. I am not interested in how well 814 works, that does not enter into it at all. The fact that it is a great union and it represents its constituents is not the issue, the issue is section 7 of the act, isn't it?

MR. SIMON: If I may respond.

I would suggest that we are on the basis of a charge filed by a single employee there has been a requested withdrawal of that charge by that employee, that parts of what about you and the board should look to whether or not the purposes and policies of the act are furthered by the prosecution of this case or prostituted by it and I think one element of that consideration would be the extent to which the employees have benefited from the action of Local 814 as compared with the manner in which they may have been injured by that representation. I would think in that connection, in that limited connection of the functioning of the union with respect to those employees is relevant and if not relevant before

your honor or ultimately before the board and conceivabely the court when it is called upon to review the action of it to know the action on the face by the prosecution of the General Counsel.

JUDGE WAGMAN: How are the people represented in the past, are we going to have the facts this union represented the people --

MR. SIMON: I leave that to General Counsel.

JUDGE WAGMAN: How about section 7.

MR. SIMON: I think the section 7 rights of these employees are being frustrated by the board's attempting to deprive them of representation required by their collective bargaining agreement guaranteed by the constitution, that covered both local unions to which they had some connection and by an arbitrators provision. I think if we are going to look at section 7 rights, we should look at them in there fullsome quality and not there narrow overview.

JUDGE WAGMAN: I am impressed by your fluencies, I am not impressed with the relevance of the efficiency of this union.

MR. SIMON: May I make an offer of proof. If the witness were permitted to testify he would testify pursuant to his agreement and understanding with local 814, that local 814 obtained during a period of

unemployment within Morgan Manhattan substantial outside employment for these employees.

JUDGE WAGMAN: Your offer is on the record.

That is accepted, signed, okay -- no, I hope you know we are going to get a complete story about how this White Plains operation and the other operations conduct their day to day affairs. That is what I am looking for. I am looking to find out how people are disciplined, who does it, who recommends promotions and that type of thing.

Q Who disciplines employees, Mr. Morgan?

A I do.

Q Who promotes employees?

A I do.

MR. SIMON: So, your Honor --

JUDGE WAGMAN: That is it.

Does the White Plains location utilize its own sales force?

A No, there is not really, the manager does some household estimating there and they do answer their phone. That would be the extent of their sales operations.

MR. SIMON: No further questions.

REDIRECT EXAMINATION

BY MR. LONDON:

Q Does that profit and loss statement reflect all of

the Morgan Brother operation that one profit and loss statement?

A Yes it does except that, well, it does and then there is one segment that is held out or can be pulled out, it is all done with on etotal and within those totals we do have to keep seperate totals for the Connecticut operation because of the Connecticut State gross receipts tax.

Q That is the same reason you have the tariff?

A It is a different state.

Q It is all part of the operation of Westchester and New York City?

A That is correct.

Q It is all one profit and loss company?

A Yes.

Q There is one bank account for Westchester?

A Yes.

Q What about bank accounts?

A One account.

Q All of the unions, all of the salaries of all your employees are paid from one payroll account?

A That is correct.

Q Were the Local 191 employees paid from that account?

A Yes.

Q Local 814?

A Yes.

Q Local 445?

A That is correct.

Q Equally true about the billing?

A The billing is done from one central point.

Q For all of the accounts in all of your operations?

A And the cash is received in one spot.

Q From all of your operations?

A Yes.

Q Is it true therefore if I moved in Connecticut and the job is $400 I send a check that does not go to the Connecticut office but it goes directly to the Morgan Manhattan office in New York?

A If you are lucky enough to get credit that would be true.

JUDGE WAGMAN: Off the record.

(Discussion off the record.)

JUDGE WAGMAN: On the record.

Q You mentioned that each facility has a letterhead or part of a letterhead which reflects its particular location?

A The letterhead is identical except one point that says in reply refer to and the address of the branch.

Q The manager of each one of your locations from Connecticut, Westchester and New York make estimates?

A Yes.

Q He takes sales that come in on the phone?

A That is correct.

Q For all of your 814, 191 and 445 problems you deal with the serious labor problems for all three unions?

A That is correct.

Q Prior to your takeover of the Evans facility, if you were to conduct a move, in the Westchester area, you would chose the Armonk or your Greenwich Connecticut facility, if that was the closest geographical area for you to make the move?

A Generally, yes.

Q Would it be fair to say Mr. Morgan that your dispatcher selects the most efficient operation geographically speaking when you conduct a move?

A We try that, yes.

Q With no regard whether that is a 445 or 814 shop, isn't that true?

A Yes.

Q I want you to look at the June 7th, 1974 letter that was, I believe it was marked as Respondents Exhibit 1. Would you read this to yourself, the last five lines?

A Okay.

Q In that letter it was mentioned that the Evans

employees were now going to have the same supervisors as the Morgan employees. Would you explain what you meant by that?

A Well, to go to the facts of the case right now the supervision of the Evans personnel is done on the outside, generally because that is where moving men work, but the only existing Evans employees is the dispatcher who never leaves the building.

As a matter of fact he is a cripple, so the supervision is in fact done by people who now work for Morgan, who are long standing Morgan employees.

Q Their supervisor is their present Morgan Evans plant manager, is that correct?

A The dispatcher at Evans is an old Evans employee.

Q Who is the manager?

A The manager is an employee, an old Morgan employee who has been put into that position.

Q It is the White Plains manager who supervises those Evans employees that you meant by that letter?

A Yes, so their supervision is done by the same person now because the White Plains supervisor could be supervising them or if they happen to be unloading in Rye someone from Rye will come over and supervise the unloading.

Q Or if it was Greenwich?

A Or Manhattan for that matter.

Q So that, is your explanation of what you meant by supervision --

A I did not mean that, Mr. Martelli wrote that letter, I agreed to it. I agreed he was correct.

Q Correct with this present explanation?

A That is correct.

Q When Mr. Martelli is referring to Morgan in this letter, he is referring to the entire Morgan operation, is that not correct?

A I presume so, you better ask Mr. Martelli.

Q You were present when the 814 contract was negotiated, were you not?

A Was I ever.

Q Were you present when the 445 contract was negotiated?

A No, that particular contract was negotiated by a different group but the conditions of the contract are virtually identical.

Q Between 814 and 445?

A Yes.

Q Are they similar to 191?

A NO.

MR. LONDON: No further questions.

RECROSS EXAMINATION

BY MR. SIMON:

Q How many employees are covered by the Local 814 agreement in your various Manhattan facility?

A Manhattan?

Q Yes?

A I would say approximately a hundred on the seniority list. Now Mr. Simon that could be in any week a lot more.

Q That is your basic work force?

A Yes.

Q How many in Armonk?

A Six.

Q How many in White Plains?

A Fourteen at the moment.

Q How many Local 445 representative employees are employed in your Rye location?

A Three.

Q How many employees are represented by Local 191 in your Greenwich location?

A Nineteen.

Q Are those the nineteen owner drivers?

A These are seperate from the owner drivers.

Q When employees from your White Plains facility are working on the same job as employees from your various Manhattan facilities, under whose supervision

are they?

A Again that is a geographical determination. If it is a job going in White Plains one of the supervisors would be the manager of the White Plains operation. If there was more than one supervisor it probably would be somebody from Armonk.

Q If the work was being performed --

A New York City, it would be supervised from the New York City operation.

Q In those instances, which ever supervisors were functioning, would function with respect to all employees on the job regardless of their point of origin?

A We have one employer, he is represented, he is the one that the men are expected to listen to.

Q You say one employer, you mean Morgan Brother?

A Morgan Manhattan and Storage is the one.

MR. SIMON: No further questions.

EXAMINATION

BY JUDGE WAGMAN:

Q Where is you office located?

A I am at 151 East 87th Street.

Q How frequently do you visit the White Plains office?

A Approximately once a week.

Q Once a week?

A Yes.

Q When you said before that you discipline employees, how do you know that an employee needs discipline?

A Well, I said before to, I managed by exception, that means when a dispatcher or the manager generally calls me and says Joe Blow has been absent seven times in the last ten times when we called him in for work, what do you want me to do about it, then I will say I will take care of it from here. Then he will get a letter.

Q Does the local manager in any of these various locations have any less disciplinary authority, can they impose certain discipline on employees?

A No, no one in my company and I think this is true in most companies, discipline is an exception and I manage by exception.

Q When a wage increase -- do you give out wage increases?

A We negotiate that.

Q Is there some step where a man is entitled to wage increase through merit, or is going to be promoted?

A No. Our contract is everybody goes up at the same time.

Q He would have no -- do you have a bonus system if fellows do an exceptional job, do they get any kind

special recommendation?

A No, we would love it but --

Q There is no opportunity for a local manager to recommend a man be rewarded or anybody be transfered?

A No, there again men do ask for favors on occasion and the manager might ask why don't you do this.

Q Does he recommend?

A I might ask him about a man's performance.

Q Now do you keep personnel records on your men. Is there a central office where there are personnel records?

A Yes.

Q Do they receive any kind of evaluation as to their performance?

A Except this exception are noted and put in the files, a customer writes in and says a man has done a good job.

Q Do some of those exceptions emanate from the manager of the White Plains office?

A No.

Q Or from any other manager?

A He would forward, again a complaint or a compliment would come to me and then in turn would be incorporated in the man's file.

Q Who determines where a particular truck and crew of two are going to go?

A That is the dispatcher's work.

Q He deploys the trucks?

A Yes.

Q Does the manager of the White Plains or the Armonk office have anything to do with the Deployment of trucks and men?

A He oversees the dispatch to make sure it is effectively done.

Q There is one thing I don't have precisely clear, that is how you obtained labor on a given day?

A We have a basic seniority list. In the case of the White Plains operation, the time we are talking about is eighteen men and on any given day they're in seniority order and on any given day we need eleven men we would take the first eleven men.

Q He can't say maybe I will pick a fellow number 13 instead of number 10?

A Because he is a better man, I would love that, you have to speak to them.

MR. SIMON: By them could the record show he referred to the union.

Q He has no discretion in the selection of a fellow?

A No.

Q Who often determines how many men will be employed out of the specific office?

A The job that an office has been given to perform

in a given day are done, most of our contracts are on the basis of van and so many men, that is really dictated to them.

Q Who makes that decision?

A The salesman makes the decision when he contacts the customer and says to the customer it will be a van and three men and seven hours to do this work.

Q The only thing that the manager has to do, he gets an instruction from someplace -- where does he get his instructions from. That is who to pick on the seniority list?

A The list is posted.

Q He gets some kind -- he has some information earlier in the morning that he is going to need seven guys or ten guys?

A That is correct.

Q Who gives him that information?

A When the job is booked, the sale is made, the ticket then goes to the geographic warehouse that makes the most sense.

They line it up. Today, at this time today they are looking at tomorrows work, the tickets there to be done. The dispatcher says they need three men here and seven there. I will need seven men.

Q He does not use any of his decisions, he has

something done on a card that says you will get seven men to do the job in Ossining?

A That is correct.

JUDGE WAGMAN: Does anybody have anything or see anything I left out. We want to get a complete story whether this is an accretion or a seperate entity.

MR. SIMON: Nothing further.

MR. LONDON: The question is an accretion on two 445 or 191.

JUDGE WAGMAN: Thank you Mr. Morgan.

Are you resting.

MR. LONDON: Yes, the General Counsel rests.

MR. SIMON: Respondent makes a motion for dismissal.

JUDGE WAGMAN: Denied.

MR. SIMON: Respondent rests.

JUDGE WAGMAN: Do you want to figure out when you want to submit briefs on this?

MR. LONDON: I will be on vacation starting in ten minutes for two weeks.

MR. SIMON: Can we go off the record.

JUDGE WAGMAN: Off the record.

(Discussion off the record.)

JUDGE WAGMAN: On the record.

In an off the record colloquy it was decided that because of various stressing needs of Counsel that

June 7, 1974

Mr. Sadler Morgan
Morgan Manhattan Storage Inc.
153 East 87th Street
New York, N.Y.

Dear Mr. Morgan:

We understand that you have recently purchased the assets of Evans Moving and Storage Inc. We further understand that you are merging the Evans operation into your operation in Manhattan covered by our collective bargaining agreement; that the work performed by and the job skills of the former Evans employees are the same as the employees covered by our contract; that the former Evans trucks have been repainted as Morgan trucks; that the former Evans trucks will be interchanged with the Morgan trucks; that the former Evans employees will be interchanged with the Morgan employees; that various of the former Evans employees will report to and operate from your Manhattan locations and vice-versa regarding the Morgan employess; that both groups of employees will service the same accounts, work for the same supervisors, be subject to the same labor relations policies and will be paid from the same office and out of the same bank account; that there will be centralized and common control of the entire operation.

We have been advised by our attorneys that in view of the above facts the former Evans employees have been effectively merged into the Manhattan bargaining unit. Accordingly, you are hereby notified that Local 814, I.B.T. considers the former Evans employees to be a part of our bargaining unit and covered by our collective bargaining agreement.

Very truly yours,

CJM:fp

Charles J. Martelli
Secretary-Treasurer

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International Brotherhood of Teamsters, Chauffeurs
Warehousemen and Helpers of America

THEODORE G. DALEY
Secretary-Treasurer

2 POST STREET
YONKERS, N. Y. 10705

LOCAL UNION
No. 445

Telephones: (914) YOnkers 3-3640 – YOnkers 3-7997

June 7, 1974

Morgan-Manhattan Company
c/o J. H. Evans and Sons, Inc.
201 Ferris Avenue
White Plains, New York 10500

Dear Sir,

It has come to my attention that you have merged the 2 above addressed companies.

I would bring to your attention that we currently have jurisdiction over the employees at J. H. Evans and will continue to maintain that jurisdiction, any conversations or agreements with other parties, notwithstanding.

If there are any questions regarding this matter, I would suggest that we meet to discuss them at your earliest convience, which is obligatory under our current contract.

Yours truly,

Theodore G. Daley
Secretary Treasurer

TGD/r
cc: Mr. Arnita
Mr. Drexler
Mr. Sidney Gaines, Esq.
Joint Council 16
Teamsters Local 814
Mr. David Brodsky, Esq.

RECEIVED
JUN 10 1974
LOCAL 814, I.B.T.

MORGAN AND BROTHERS MANHATTAN STORAGE COMPANY, Inc.

MOVING
PACKING
STORAGE
FIREPROOF VAULTS

153 EAST 87th STREET · NEW YORK, N. Y. 10028 · (212) 288-5500
CABLE ADDRESS: MORGANWARE

June 11, 1974

Mr. Charles J. Martelli
Local 814 IBOFT
33-01 38th Avenue
Long Island City, N.Y. 11101

Dear Mr. Martelli:

Your letter of June 7, 1974 has arrived this date in our offices. The letter is essentially correct in most respects.

We have also received this date in our White Plains office (The former J.H. Evans warehouse) a letter from Local 445, IB of T stating emphatically their stand that the employees of the former J.H. Evans Company are now, and will continue to use Local 445 as their bargaining agent.

In the light of these facts, it seems that there is some area of dispute between the two locals. We feel that the resolution of the dispute is best done between the two locals and the employees involved. Please let me know the outcome of your deliberations.

Yours truly,

E. Sadler Morgan
President

ESM:dk

cc: Theodore Daley
Joseph Trerotola
David Brousky

RECEIVED
JUN 12 1974
LOCAL 814, I.B.T.

Rep 3

June 17, 1974

Mr. Joseph Trerotola, President
Teamsters Joint Council 16
265 West 14th Street
New York, New York 10011

Dear Sir and Brother,

A jurisdictional dispute apparently exists between Local 445 and Local 814 concerning the merger of Morgan-Manhattan and J. H. Evans and Sons, a Moving and Storage Company located in White Plains and currently under contract to Local 445. Your Office has a copy of our letter to Morgan-Manhattan, sent in care of J. H. Evans on June 7th, notifying them that we currently have jurisdiction and will continue to maintain that jurisdiction under our collective bargaining agreement. Local 814 takes an opposing view.

We would appreciate your good offices in the form of a meeting with yourself and Local 814 to see if we can resolve this matter as soon as possible. If this is not plausible, then we would appreciate a formal appearance before the Joint Council Executive Board.

With kindest personal regards, please permit me to remain,

Fraternally yours,

Theodore G. Daley
Secretary Treasurer

RECEIVED
JUN 18 1974
LOCAL 814, I.B.T.

TGD/r

cc: Mr. Arnita
Mr. Drexler
Teamsters Local 814
Mr. Sidney Caimes, Esq.
Mr. Ed Brauman
Mr. David Brodsky, Esq.

TEAMSTERS LOCAL

RECEIVED
SEP 16 1974
COHEN WEISS AND SIMON

September 13, 1974

Mr. E. Sadler Morgan
Morgan Manhattan STge. Whse. Inc.
153 East 87th St.
New York, New York

RE: J. H. Evans & Sons Inc.

Dear Sadler:

Enclosed please find a copy of the decision of the Joint Council 16 with reference to the Union jurisdiction at J. H. Evans, which has been awarded to Local 814.

Your immediate compliance with all matters concerning and in connection with the aforementioned will be greatly appreciated.

Very truly yours,

James V. Bracco
President

JVB/fb
Encls.

cc: Bruce Simon, Esq.

JOINT COUNCIL No. 16

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA

EXECUTIVE BOARD
JOSEPH TREROTOLA
President
JOHN HOH
Vice-President
ABE PRICE
Secretary-Treasurer
ANTHONY DISTINTI
Recording Secretary
BERNARD ADELSTEIN
Trustee
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ADVISORY BOARD
DAVE LEVINGER
JAMES GEOGHEGAN
JOHN DeLURY
JOSEPH KONOWE
JOSEPH FORZANO

265 WEST 14th STREET
NEW YORK, N.Y. 10011
WAtkins 4-0002

September 6, 1974

Mr. Theodore C. Daley
Secretary-Treasurer
Local Union No. 445, I.B.T.
2 Post Street
Yonkers, New York, 10705

Re: Jurisdictional Dispute
Locals 445 and 814
Morgan-Manhattan and
J. H. Evans & Sons Inc.

Dear Sir and Brother:

After hearing representatives from Local 814 and 445, and upon consideration of all the facts and arguments presented by both unions, it is the decision of the Joint Council No. 16 Executive Board that jurisdiction over the employees of J. H. Evans and Sons Inc., which has been purchased by and merged into Morgan Manhattan Storage Inc., is awarded to Local 814, which has represented the employees of Morgan Manhattan Storage Inc. for many years.

Fraternally,

JT:rm
cc: Charles Martelli
Local No. 814

Joseph Trerotola
President

RECEIVED
SEP 9 1974

TEAMSTERS LOCAL [illegible]
[illegible] • [illegible] • [illegible] 4510

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2 drft

October 4, 1974

Mr. E. Sadler Morgan
President
Morgan Manhattan Stge.
183 East 87th St.
New York, New York

Dear Mr. Morgan:

This will confirm our agreement that in accordance with the decision of the Teamsters Joint Council # 16 the Local 814 Morgan-Manhattan Storage Collective Bargaining Agreement shall, effective October 1, 1974, cover the employees of Morgan-Manhattan Stge. Co., employed at J. H. Evans & Sons, 201 Ferris Avenue, White Plains, New York.

Please indicate your agreement by executing and returning the copy of this agreement.

Very truly yours,

Charles J. Martelli

Charles J. Martelli
Secretary-Treasurer

CJM/fb
Enc.

BY: E. Sadler Morgan
E. Sadler Morgan, President
Morgan-Manhattan Stge.

President
Secretary Treasurer
Vice President
Trustees
[illegible]
Business Agents
AFFILIATIONS
International Brotherhood of Teamsters,
[illegible] Warehousemen & Helpers of
[illegible]
[illegible] No. 16 IBT Eastern Con
UNITS
• Moving & Storage • Off
• [illegible] • New Yor
[illegible] • Car Ass
[illegible] • Automobile

International Brotherhood of Team sters, Chauffeurs
Warehousemen and Helpers of America

THEODORE G. DALEY
Secretary-Treasurer

2 POST STREET
YONKERS, N. Y. 10703

LOCAL UNION
No. 445

Telephones: (914) YOnkers 3-3640 – YOnkers 3-7997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

December 9, 1974

Mr. Charles Martelli, Secretary-Treasurer
Teamsters Local 814
33-01 38th Avenue
Long Island City, N.Y. 11101

RECEIVED
DEC 11 1974
COHEN WEISS AND SIMON

Dear Sir and Brother:

In accordance with discussions that I have had with a representative of your Local Union, Mr. Phil Doran, this is to inform you that this Local Union will comply with the directive of Joint Council 16 in the matter of the employees of J. H. Evans & Sons, Inc.

The Local Union is in the process of arranging for the orderly transfer of the employees at J. H. Evans & Sons. Inc. to Local 814 hopefully by January 1st.

Fraternally yours,

Theodore G. Daley

Theodore G. Daley
Secretary-Treasurer
Local Union No. 445

TGD:sl

cc: Mr. Joseph Trerotola
President, Joint Council 16

BEST COPY AVAILABLE

lessor executes a contract or transaction as herein described. The union shall also be advised of the exact nature of the transaction excluding financial details. In the event the Employer fails to require the purchaser, transferee or lessee to assume the obligations of this Agreement, the Employer shall be liable to the Union, and to the employees covered, for all damages sustained as a result of such failure to require assumption of the terms of this Agreement; but shall not be liable after the purchaser, transferee or lessee has agreed in writing to assume the obligation of this Agreement.

51. ACQUISITION AND UNION JURISDICTION

A. (1) If an Employer covered by this Agreement (or any owner or principal) has or hereafter acquires (whether by purchase, merger or otherwise) a controlling interest (whether ownership, stock, equitable or managerial) in any other moving and storage business within the jurisdiction of Local 814 or Local 445, this Agreement shall cover such operation and the employees shall be considered an accretion to the collective bargaining unit covered by the applicable local.

(2) Jurisdiction shall mean the following geographical territory: New York City, Nassau and Suffolk Counties, Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties.

B. If an Employer covered by this Agreement (or any owner or principal) has or hereafter acquires (whether by purchase, merger or otherwise) a controlling interest (ownership, stock, equitable or managerial) in any other moving and storage business outside the jurisdiction of Local

814 or Local 445:

1. such business may not be used to evade any of the Employer's obligations under this agreement including but not limited to the obligations relating to contract employees nor to deplete the existing work opportunities of employees covered by this Agreement.

2. If there is a conflict between the existing work opportunity expectations of the employees covered by this Agreement and the employees of the acquired company, the Union and the Employer shall attempt to agree upon a fair and equitable balance of these interests. If they fail to agree, the matter shall be submitted directly to binding arbitration before the Impartial Chairman. Pending arbitration, there shall be no strike.

3. Any contract employees for such business loading or unloading within the Metropolitan District as defined by this Agreement must be assigned and must utilize only employees covered by this Agreement, if available. Employees laid off shall be deemed available and shall be recalled by the Employer in seniority order.

C. Each Employer covered by this Agreement shall furnish the Union with a list of all contract employees performing work for them wherever said contract employees may have been domiciled, and said contract employee shall be covered by Article 25 hereof. In addition, each Employer covered by this Agreement will keep said list up-to-date continuously, informing the Union immediately as to any additions to or deletions from the list of covered Contract employees.

subordinate body to refrain from executing such agreement, and in such circumstances no proposed agreement shall become valid and binding unless specifically approved by the General Executive Board. When such action is contemplated or taken, the employers involved shall be promptly notified of the necessity of specific approval by the General Executive Board before the contract involved may become valid and binding.

The General Executive Board shall also have the power to take such disciplinary action as it deems necessary after proper notice according to this Constitution in those cases where it finds that a subordinate body or its representatives have without cause executed agreements which adversely affect members of this International Union within the jurisdiction of the particular Joint Council, Area Conference or members covered by an area agreement.

Disputes Over Jurisdiction

Section 12. Where two (2) or more Local Unions are in dispute concerning jurisdiction, there shall be no work stoppage of the involved operation, but such controversy shall be submitted for determination to the Joint Council Executive Board. If any party to such dispute is aggrieved by the decision of the Joint Council Executive Board, it may appeal to the General President for the appointment of a special committee which in his discretion he may appoint for the purpose of holding a hearing and making a report and recommendations on the issues raised. The committee shall make its report and recommenda-

tions to the General Executive Board for its decision, which shall be final and binding. The parties shall not be entitled to any further hearing or appearances before the General Executive Board. Pending, and as a condition to, appeal and until such time as the General Executive Board makes its decision, any party taking an appeal under this Section shall comply with the decision of the Joint Council Executive Board unless the General President or the General Executive Board stays the effectiveness of the decision of the Joint Council Executive Board pending appeal.

Where two (2) or more Local Unions involved in a dispute concerning jurisdiction are affiliated with different Joint Councils, such controversy shall be submitted for determination directly to the General Executive Board and shall be governed by the same provision set forth above with respect to an appeal from the decision of a Joint Council Executive Board. Among other things, the General President, in his discretion, may appoint a special committee to hold a hearing and make a report and recommendations to the General Executive Board on the issues raised.

Every member of a Local Union, as a condition of becoming and remaining a member, acknowledges the right of the General Executive Board, in resolving a jurisdictional dispute, to transfer him from one Local Union to another.

Any Local Union violating this Section and engaging in any strike or work stoppage or refusing to

comply with the decisions so rendered in accordance with this Section, shall be subject to the appointment of a Trustee, revocation of charter, or such other penalty which the General Executive Board may propose.

This Section shall be applicable to any Local Union that does not appeal to the General Executive Board but fails or refuses to comply with a jurisdictional award rendered against the Local Union by the Joint Council Executive Board.

The General Executive Board, in its discretion, shall have the authority to decide jurisdictional disputes on the basis of written submissions without the conduct of a hearing.

Any decision rendered in accordance with the procedures set forth in this Section shall take precedence over any arbitration award or decision of a joint grievance committee.

Government Employees

Section 13. Local Unions having members who are employed by any government, governmental agency or authority shall not, in their relationship to such government, governmental agency or authority, engage in any strike or other union activities which are prohibited by the law of such government, governmental agency or governmental authority. The General Executive Board may, in its discretion, within the limits of the law, assist such Local Unions in their relationship with their public employers, which assistance may include lawful financial support in the collective bargaining and disputes settlement processes.

Parties to Contracts

Section 14. No subordinate body shall purport to make the International Union or any other subordinate body a party to, or refer to it as a separate entity in, any collective bargaining or other agreements without the express written consent of the authorized officers of the International Union or of the other subordinate body.

ARTICLE XIII

ASSISTANCE TO LOCAL UNIONS

General Assistance to Local Unions

Section 1. No Local Union shall receive financial assistance from the International Brotherhood of Teamsters unless the Secretary-Treasurer of said Local Union has been bonded in accordance with the provisions of this Constitution.

Assistance from Sister Local Unions

Section 2. All Local Unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, soliciting financial aid or other monetary consideration from sister Local Unions, must first receive official approval and endorsement from the General President.

Councils in a state or states, the General Executive Board may establish a State or Multi-State Joint Council with which the Local Unions in the state or states must affiliate.

Whenever the words "Joint Council" appear in other sections of this Constitution, they shall mean Joint Council or State or Multi-State Joint Council.

Representation

Section 2 (a). Each Local Union shall be entitled to seven (7) delegates excluding its Business Agents.

(b). The seven (7) executive officers of each Local Union shall constitute the delegates to the Joint Council. Business Agents shall be entitled to the floor but cannot introduce a motion or vote.

(c). Any delegate to the Joint Council who does not attend at least twenty-five percent (25%) of the regularly scheduled meetings of the Joint Council in any one calendar year, unless excused by a majority of the delegates of the Joint Council present and seated, shall be disqualified as a delegate to the Joint Council for the balance of his term of office in the Local Union.

(d). Any complaint, protest or charge by any delegate concerning the conduct of a Joint Council election shall be made to the General President in writing, by registered or certified mail, within forty-eight (48) hours setting forth the exact nature and specifications of the complaint, protest or charge and his claim as to how it has affected the outcome of the election. The General President shall decide

such complaint, protest or charge. The decision of the General President may be appealed to the General Executive Board from whose decision there shall be no further appeal.

Per Capita Tax

Section 3. Local Unions shall pay to the subordinate bodies with which they are affiliated the monthly per capita tax and assessments which shall be determined by the subordinate bodies in accordance with their Bylaws and such payments shall be made no later than the twentieth (20th) day of the succeeding month.

Judicial Power

Section 4 (a). Joint Councils shall have full power to adjust all questions of jurisdiction between Local Unions, subject to the provisions of Article XII, Section 12, to try cases against Local Unions, cases appealed from Local Unions, appeals by members, and to try individual cases which Local Unions refuse or neglect to try in accordance with the trial procedure provided for in Article XIX.

(b). Should any member violate his obligation by refusing to employ union men, or to patronize and assist members of the International Union, the member who may have been aggrieved shall present his case in writing to the Joint Council, or if there is no Joint Council, then to the General Executive Board and it shall hear and decide the case and report its decision back to each affiliated Local Union.

Joint Council Bylaws

Section 5. A Joint Council may make such Bylaws as it deems proper, provided they do not conflict with the laws of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Such Bylaws and amendments thereto shall be submitted to the General President for approval and shall have no force nor effect until approved by the General President; regardless of approval, if any conflict should arise between such Bylaws or amendments thereto and the International Constitution or amendments thereto, the provisions of the International Constitution shall control. If the General President's office fails to approve the Bylaws the matter may be referred by the Joint Council to the General Executive Board.

Affiliation of Local Unions

Section 6. All Local Unions within the jurisdiction of the Joint Council shall affiliate with the Joint Council, comply with its laws and obey its orders.

Section 7. The officers of the Joint Council shall consist of a President, Vice President, Recording Secretary, Secretary-Treasurer and three (3) Trustees. These officers shall constitute the Executive Board of the Joint Council.

Only delegates to the Joint Council shall be eligible to serve as Joint Council officers. In the event that a Joint Council officer ceases to serve as a

Local Union officer, he shall cease to be a Joint Council officer effective as of such time.

ARTICLE XVI

CONFERENCES

Establishment

Section 1. Experience has demonstrated that State, Multi-State, Multi-Area or National and Area Conferences and Trade Divisions are of value to this International Union and its affiliates. Therefore, Conferences and Trade Divisions shall be organized and chartered as subordinate bodies of the International Union for such geographical area, industries or companies as the General Executive Board may from time to time direct. They shall be at all times subject to the unqualified supervision, direction and control of the General President and they shall function under the rules prescribed by the Bylaws approved by the General President. A Policy Committee for the Conferences shall be elected by the delegates to such Conferences in accordance with the applicable provisions of Conference Bylaws. The International Constitution shall supersede Conference Bylaws in the event of conflict.

Conference Bylaws

Section 2. Each Conference shall submit Bylaws adopted by it to the General President for his approval, and such Bylaws shall not become effective until such approval has been obtained. The General

MINUTES OF MEETING OF THE

MOVING & STORAGE JOINT LABOR MANAGEMENT BOARD

Held On

December 5, 1974

at

1776 Broadway
New York, New York 10019

PRESENT:

For Management:	Stanley Cirker Martin L. Santini Robert Fisher
For Local 814, I.B.T.:	Charles Martelli Vincent Bracco John English
For Morgan & Brother Manhattan Storage Co., Inc.:	Sadler Morgan

The meeting was called as an emergency meeting on information that there was a work stoppage at Morgan & Brother Manhattan Storage Co., Inc.

Upon consideration of the facts presented both by the Union and the employer, the men were ordered back to work, and a decision was rendered as follows:

After hearing both sides, the Joint Labor Management Board requires Morgan & Brother Manhattan Storage Co., Inc. to apply the Local 814 Collective Labor Agreement to its employees at the former J. H. Evans & Sons Inc. location.

RECEIVED

SEP 10

We find that Morgan is an 814 house acquiring a company within the jurisdiction of 814 and the employees should be an accretion to the 814 agreement in accordance with Par. 51A Page 82 of the Collective Bargaining Agreement.

In addition to Article 51(A)(1) of the Collective Labor Agreement this decision is based upon Local 814 letter to Morgan dated June 7, 1974 and Morgan's letter to Local 814 dated June 11, 1974 and the facts related therein; the decision of Teamsters Joint Counsel No. 16 dated September 6, 1974 and the Joint Board's independent evaluation of the facts and evidence presented at the hearing.

There being no further business the Board session was adjourned at 4:30 P. M.

DAVID BRODSKY

RECEIVED
DEC 9 1974
LOCAL 814, I.B.T.

ID- 690-75
White Plains, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 814, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Morgan and Brother-Manhattan Storage Co., Inc.)

and

Case 2-CB-5729

ROBERT DRYERS

Michael L. London, Esq., of New York City, NY, for the General Counsel.
Bruce H. Simon, Esq. (Cohen, Weiss and Simon), of New York City, NY, for the Respondent.

DECISION

Statement of the Case

LEONARD M. WAGMAN, Administrative Law Judge: Upon an unfair labor practice charge filed by Robert Dryers on November 18, 1974, the Regional Director issued the complaint in this case on January 6, 1975. The complaint, as amended at the hearing, alleged that on or about October 16, 1974, Respondent, Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (referred to below as Local 814) violated Section 8(b)(2) and 8(b)(1)(A) of the National Labor Relations Act, as amended (29 U.S.C., Sec. 151, et seq.) (referred to below as the Act) by entering into an agreement with Morgan and Brother-Manhattan Storage Co., Inc. (referred to below as Morgan) wherein the parties agreed to extend the application of their collective-bargaining agreement to the employees at Morgan's White Plains facility, notwithstanding that at the time the parties agreed to such extension Local 814 was not the majority-designated representative of Morgan's White Plains employees. The complaint also alleges that thereafter Local 814 violated Section 8(b)(2) and 8(b)(1)(A) of the Act by telling Morgan's White Plains employees that unless they joined Local 814 and executed authorization cards in favor of Local 814 they would be replaced in their jobs by Local 814 members, and by promulgating and issuing a letter to Morgan's White Plains employees advising that they were required to become members of Local 814 as a condition of employment no later than 31 days after receipt of that letter of Local 814. Local 814, by its answer, as amended at the hearing, denied that its conduct, as alleged in the amended complaint, violated the Act.

This case was tried before me at New York City, New York, on August 12, 1975. Upon the entire record before me, including my observation of the witnesses, and after due consideration of the briefs filed by the General Counsel and Local 814, respectively, I make the following:

Findings of Fact

I. Jurisdiction

Morgan and Brother-Manhattan Storage Co., Inc., a New York corporation, with an office and place of business in the City of White Plains, New York, and additional facilities elsewhere in the States of New York and Connecticut, performs moving, storage and related services. During the year preceding the issuance of the complaint herein, Morgan, in the course and conduct of its business operations, performed services valued in excess of $4,000,000, of which services valued in excess of $50,000 were performed in, and for various enterprises located in, states other than the State of New York. Upon the foregoing admitted facts, I find that, at all times material to this case, Morgan and Brother-Manhattan Storage Co., Inc., has been, and is an employer engaged in commerce within the meaning of Section 2(2), 2(6) and (7) of the Act.

II. The Labor Organizations Involved

The complaint alleges, Local 814 admits, and I find that, at all times material to this case, Local 814 and Local 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (referred to below as Local 445), have been and are labor organizations within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. The Facts 1/

1. The extension of the contract between Morgan and Local 814 to Morgan's White Plains facility

On June 1, 1974, Morgan acquired the White Plains, New York, moving and storage facility of J. H. Evans & Sons Inc. (referred to as Evans) and has since operated that facility as part of its own moving and storage business.

Prior to the purchase, Evans engaged in a moving and storage operation, "with some emphasis on commercial . . . or office moving . . . ." Under Morgan, the White Plains facility's operations have remained the same. However, Morgan has repainted Evans' trucks in Morgan's colors. At the time of this transfer of ownership, Evans' 18 White Plains moving and storage employees were covered by a collective-bargaining agreement between Evans and Local 445. When Morgan took over the Evans operation, on June 1, 1974, it retained the dispatcher and those same 18 employees at the White Plains facility. Since that date, Morgan has continued to employ, at its White Plains facility,

1/ There is no dispute as to the facts in this case.

substantially the same employees as Evans had employed there prior to the transfer of ownership.

On June 7, 1974, Local 814, the collective-bargaining representative of the employees at Morgan's facilities in the Borough of Manhattan, New York City, and at Morgan's Armonk facility, in nearby Westchester County, announced to Morgan by letter that Local 814 considered the White Plains facility to be "a part of [Local 714's] bargaining unit and covered by [Local 814's] collective bargaining agreement."

The contract referred to in Local 814's letter was effective on April 1, 1974 for a term of 3 years, and has been in effect at all times material to the case. Contained in Local 814's contract, was a union-security provision requiring Morgan's employees in the bargaining unit to become and remain members of Local 814 on or after the 31st day of their employment or the contract's effective date, whichever is later. The contract also contains a provision requiring Morgan to extend the contract's coverage to any moving and storage company acquired by Morgan within Local 814's territorial jurisdiction.

Morgan received Local 814's June 7 letter on June 11. On the same day, Morgan also received a letter in which Local 445 asserted its intention to continue to represent the employees at Morgan's White Plains operation. Faced with conflicting claims of representative status, Morgan, by letter of June 11, addressed to Local 814, with a copy to Local 445, suggested that the labor organization resolve the dispute between themselves "and the employees involved."

At the request of Local 445, the Executive Board of Teamsters Joint Council 16 considered the dispute. On September 6, the Joint Council's Executive Board awarded jurisdiction over the employees at Morgan's White Plains facility to Local 814. One week later, Local 814 requested Morgan to abide by that award. Thereafter, on October 16, Morgan and Local 814 entered into an agreement in which Morgan agreed to apply its collective-bargaining agreement with Local 814 to the employees at Morgan's White Plains facility.

On or about October 17, Local 814's Business Agents Anthony Gilberto and Charles Agar told Morgan's White Plains employees that they were required to join Local 814 and sign authorization cards for Local 814. Gilberto and Agar warned that if White Plains employees failed to join Local 814, that labor organization would replace them with members of Local 814. Thereafter, on or about October 25, Local 814, by letter signed by its president, James V. Bracco, notified Morgan's White Plains employees that they were required to join Local 814, as a condition of employment, no later than 31 days after receipt of the letter. The letter also warned that Local 814 would request Morgan to discharge those White Plains employees who did not comply with that requirement.

Thereafter, Local 814 complained to the Moving & Storage Joint Labor Management Board that Morgan was not applying the collective-bargaining agreement to the White Plains facility. The Moving & Storage Joint Labor Management Board "is a bi-partisan type panel consisting of an equal number of representatives from employees covered by . . . multi-employer collective-bargaining agreements with Local 814 and union representatives sitting as an arbitration panel under that agreement." Under the collective-bargaining

agreement between Morgan and Local 814, this panel had authority to issue arbitration awards in disputes arising under that agreement. In accordance with its usual procedure, the Moving & Storage Joint Labor Management Board, following notice to Morgan and Local 814, held a hearing on the question of whether Morgan was required to extend its contract with Local 814 to the White Plains employees. The Joint Board's decision, issued on December 5, 1974, was as follows:

> After hearing both sides, the Joint Labor Management Board requires Morgan & Brother Manhattan Storage Co., Inc. to apply the Local 814 Collective Labor Agreement to its employees at the former J. H. Evans & Sons Inc.
>
> We find that Morgan is an 814 house acquiring a company within the jurisdiction of 814 and the employees should be an accretion to the 814 agreement in accordance with Par. 51A Page 82 of the Collective Bargaining Agreement.
>
> In addition to Article 51(A)(1) of the Collective Labor Agreement this desicion (sic) is based upon Local 814 (sic) letter to Morgan dated June 7, 1974 and Morgan's letter to Local 814 dated June 11, 1974 and the facts related therein; the decision of Teamsters Joint Counsel No. 16 dated September 6, 1974 and the Joint Board's Independent evaluation of the facts and evidence presented at the hearing.

2. The relationship between the White Plains facility and Morgan's other facilities

In addition to the White Plains facility, which had 14 employees at the time of the hearing, Morgan operates from eight other facilities. Of these, five, employing a total of about 100 employees are in the Borough of Manhattan, New York City, one with three employees is at Rye (Westchester County), New York, one with six employees, is in Armonk (Westchester County), New York and one with 19 employees, is in Greenwich, Connecticut.

Morgan's operations in Manhattan include one record storage facility, two moving and storage facilities and two storage facilities. At Rye and White Plains, Morgan has moving and storage facilities, with some commercial operations at the White Plains facility. Morgan's Armonk facility is a long distance terminal including a machinery and export operation. Finally, the Greenwich facility conducts moving and storage operations with emphasis on export activity. The White Plains facility is 2 to 3 miles from Morgan's Armonk facility, 7 to 9 miles from the Rye facility, 11 miles from the Greenwich facility, and 16 or 17 miles from the Manhattan facilities.

Morgan's administrative offices are in Manhattan. Its officers consist of Chairman of the Board Charles D. Morgan who is the chief administrative officer, President E. P. Sadler Morgan, Vice Presidents John V. and Charles S. Morgan, and Secretary Arthur J. Morgan.

At its Manhattan administrative office, Morgan performs centralized billing, collections, bookkeeping, accounting, purchasing, payroll preparation and advertising for its entire operation. Although each facility maintains

its own payroll records, Morgan has a single payroll account for all of its branches and a consolidated payroll on a computer situated at one of the Manhattan locations. Morgan issues a single profit-and-loss statement for all of its New York operations, including White Plains.

President Sadler Morgan negotiates all collective-bargaining agreements for Morgan. He also exercises control over Morgan's labor relations, including questions arising under the collective-bargaining agreements, discharges, suspensions, long-term layoffs and discipline. When grievances cannot be resolved at facility level, President Morgan joins in subsequent attempts at resolution.

The skills required of the employees at Morgan's White Plains facility are similar to those required of the employees at Morgan's other facilities. All of Morgan's facilities, including White Plains, work the same hours and have the same shifts. Morgan's Manhattan headquarters allocates moving work to its facility nearest to the move's point of origin. There is also cooperation between branches. Thus, as explained by President Morgan:

> . . . as a matter of fact there are trucks that load in New York City that are to be delivered the following day in the suburb [and] pick up their help for unloading at the geographically closest warehouse.
>
> The opposite is true, trucks loading in the suburbs for New York City delivery would do it the [same] way by picking up help from a New York operation.

Morgan's White Plains facility supplies an average of 11 man-days of work per week to Morgan's other Westchester branches. In return, the other Westchester branches provide an average of two man-days of work per week to the White Plains facility. In addition to the temporary interchange, one White Plains employee has transferred permanently to Morgan's Armonk facility.

Prior to, and since, Morgan's acquisition of the J. H. Evans White Plains facility, Local 814 has represented Morgan's Manhattan and Armonk 2/ employees under a single contract. Local 445 represents Morgan's Rye employees under a separate contract. A third IBT local, Local 191, has a contract covering Morgan's Greenwich employees. In each instance, the bargaining unit consists of chauffeurs, packers, helpers, warehousemen, and checkers.

Each of Morgan's branch facilities is under a manager, who is responsible for its day-to-day operation and local sales. The facility managers make cost estimates on moving jobs for prospective customers in their respective geographic areas of operation. The branch managers "make sure that their buildings are kept clean and the roofs don't leak and the customers are kept happy when they come in and want to have access to their goods." They also supervise all loading and unloading operations in their respective geographic areas. Thus, when employees from White Plains are unloading in Rye, they are under the Rye manager's supervision.

2/ Nineteen owner-drivers based at Morgan's Armonk facility are also members of Local 191.

At each facility, a dispatcher under the branch manager's supervision controls the work force's number. Each working day, the facility dispatcher determines the number of men to be employed or laid off in accordance with his facility's expected work load for the following workday. The dispatcher draws his manpower from a seniority list limited to the employees assigned to his branch. Each workday, the dispatcher draws the manpower needed at his branch for the following workday. If the seniority list is exhausted the dispatchers have authority to hire additional employees. However, each branch manager is responsible to "make sure that [his] dispatcher is not wasting help."

B. Analysis and Conclusions

The ultimate unfair labor practice issue to be decided in this case is whether Local 814 violated the Act on and since October 16, 1974, by attempting to apply to Morgan's White Plains employees the collective-bargaining agreement covering Morgan's Manhattan and Armonk employees, including the union security provisions thereof. It is settled law that unless unit accretion is shown, an employer and a union may not, without the majority consent of the employees to be added thereto, expand an existing bargaining unit to include a new or added facility. E.g., Hershey Foods Corp., 208 NLRB 452, 456 (1974). Here, Morgan's White Plains employees have not separately chosen Local 814 as their collective-bargaining representative. It follows, therefore, that the unfair labor practice issue presented in this case turns on whether the record shows that prior to the contract extension, Morgan's White Plains employees had become merged through accretion in the Manhattan-Armonk collective-bargaining unit.

Local 814 contends that the Board should defer to the Moving and Storage Joint Labor Management Board's arbitration award and the jurisdictional aware issued by Teamsters Joint Council 16 as final and binding determinations of that issue. However, Board law does not countenance such deferral.

Thus, in two recent cases (Hershey Foods Corp., supra, and Combustion Engineering, Inc., 195 NLRB 909 (1972)) in which the Board was urged to apply its policy favoring arbitration, as expressed in Collyer Insulated Wire, 192 NLRB 837 (1971) and Spielberg Manufacturing Co., 112 NLRB 1080 (1955), and honor determinations on contract coverage where in each case the arbitrator had grounded his determination largely upon his finding that there was a unit accretion, the Board refused to do so. In each case, the Board held "that where union accretion is in issue, it will not eschew its statutory obligation to decide that issue itself." Hershey Foods Corp., supra, 208 NLRB at 457.

Similarly, the Board has traditionally refused to defer to intraunion determinations on issues involving the rights of employees to select a labor organization as their collective-bargaining representative, as guaranteed by Section 7 of the Act. 3/ S. G. Adams Company, 115 NLRB 1012, n. 1 (1956); Trans-American Video, Inc., 198 NLRB No. 186, n. 6 (1972). Clearly, the question of whether Morgan's White Plains facility is an accretion presents such an issue.

3/ Section 7 provides as follows:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to (Continued)

As Board law does not permit deferral to either the Joint Labor Management Board's arbitration award, or to the jurisdictional award issued by Teamster Joint Council 16, I shall now consider Local 814's claim of accretion on its merits. For the reasons set forth below, I find that Morgan's White Plains facility is not an accretion.

The determination of whether an accretion has occurred depends upon the particular facts of each case. As stated in The Great Atlantic & Pacific Tea Co., 140 NLRB 1011, 1021 (1963):

> In determining that a newly established facility or operation is an accretion to an existing unit, the Board has given weight to a variety of factors, such as integration of the operations; centralization of managerial and administrative control; geographic proximity; similarity of working conditions, skills and functions; common control over labor relations; collective-bargaining history; and interchangeability of employees. Obviously, cases in which all of these, or only these, positive asscretion factors are present are rare. For, the normal situation presents a variety of elements, some militating toward and some against accretion, so that a balancing of factors is necessary. In addition, in some cases the Board gives greater weight to some factors than to others and, indeed, the presence or absence of a particular factor may be crucial. (Citations omitted.) 4/

Here, Local 814 bases its accretion claim upon the following considerations; (1) centralization of managerial and adminstrative control; (2) geographic proximity; (3) similarity of working conditions, skills and functions; (4) common control of labor relations; (5) the bargaining history of Local 814 and Morgan's employees; and (6) interchange of employees. However, while the considerations urged by Local 814 weigh in favor of a combined unit of Morgan's Manhattan, Armonk and White Plains facilities, they do not displace the factors which press the balance in favor of a separate White Plains unit. Thus, prior to its acquisition by Morgan, the White Plains facility's 18 employees constituted a separate bargaining unit. Further, upon acquiring Evans' White Plains facility, Morgan retained all of its predecessor's bargaining unit employees at that location and employed them in substantially the same moving and storage operations as did Evans. In light of this separate bargaining history and other factors such as separate immediate day-to-day supervision, a separate seniority list, and physical separation from Morgan's other facilities, the Board might find the White Plains facility to be a separate appropriate unit.

3/ (Continued) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

4/ Accord: Hershey Foods Corp., supra, 208 NLRB at 457-458.

Where, as here, the employee group sought to be added to an established bargaining unit may itself constitute a separate appropriate unit, the Board will not apply its accretion doctrine. Hershey Foods Corp., supra, 208 NLRB at 458. Thus, the Board will not, "under the guise of accretion compel a group of employees who may constitute a separate appropriate unit to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret election or by some other evidence" that the majority of the group consents to being represented as part of the overall unit. Melbet Jewelry, 180 NLRB 107, 110 (1969). Here, as no such majority consent was given by Morgan's White Plains employees, there was no lawful justification for including them in with Morgan's Manhattan and Armonk unit employees in the Local 814 bargaining unit under the guise of accretion. It follows, and I find, as alleged in the complaint, that Local 814 by attempting to apply its collective-bargaining agreement with Morgan, including the union-security clause, to Morgan's White Plains facility employees, violated Section 8(b)(1)(A) and (2) of the Act. See Hershey Foods Corp., supra, 208 NLRB at 458. 5/

Conclusions of Law

1. By attempting to apply its collective-bargaining contract with Morgan, including the union-security provisions thereof, to Morgan's White Plains faulty employees, Local 814 violated Section 8(b)(1)(A) and (2) of the Act.

2. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Local 814 has engaged in certain unfair labor practices, I shall recommend that Local 814 be ordered to cease and desist therefrom, and from like or related unfair labor practices, and that Local 814 take certain affirmative action found necessary to effectuate the policies of the Act.

5/ As a further ground for dismissal, Local 814 urges the Charging Party's letter of March 14, 1975, informing the Regional Director that the Charging Party was "dropping [his] charges against Local 814 . . . ." However, Local 814's suggestion runs afoul of Section 102.9 of the Board's Rules and Regulations, Series 8, as amended, which permits withdrawal of an unfair labor practice charge, "prior to the hearing, only with the consent of the regional director with whom such charge was filed . . . ." In the instant case, the Regional Director withheld his approval after having issued the instant complaint, on behalf of the General Counsel, on January 6, 1975. In such circumstances, the fact that the Charging Party did not wish to pursue his charge further did not require that the Regional Director, withdraw the complaint. "'[F]or once a charge is filed, the General Counsel proceeds, not in vindication of private rights, but as the representative of an agency entrusted with the power and the duty of enforcing the Act in which the public has an interest." The Ingalls Steel Construction Company, 126 NLRB 584 n. 1 (1960). Accordingly, as the Regional Director has not abused his discretion, in this matter, the Charging Party's withdrawal letter does not provide ground for dismissing the complaint in this case.

Having also found that the collective-bargaining agreement in question contains a union-security provision, I shall recommend that Local 814 be ordered to restore to present or former employees at Morgan's White Plains facility any fees, dues, fines or other payments to Local 814 which were unlawfully deducted from their pay. Additionally, the amounts of reimbursement shall carry interest at the rate of 6 percent per annum.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER 6/

Respondent, Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, agents and assigns, shall:

1. Cease and desist from:

(a) Extending or applying, or causing or attempting to cause Morgan and Brother-Manhattan Storage Co., Inc., to extend or apply to the employees at the Morgan and Brother-Manhattan Storage Co., Inc., facility at White Plains, New York, any of the provisions, of the collective-bargaining agreement between Local 814 and Morgan and Brother-Manhattan Storage Co., Inc., or any renewal, modification or extension thereof, unless and until Local 814 has been certified by the Board as the representative of such employees in a bargaining unit covered by said contract.

(b) In any like or related manner, restraining or coercing the employees at the White Plains, New York, facility of Morgan and Brother-Manhattan Storage Co., Inc., in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Reimburse all present and former employees at Morgan's White Plains facility, except those who joined Local 814 prior to the execution of the October 16, 1974, agreement between Morgan and Local 814, by which the coverage of the union-security clause in the Morgan-Local 814 collective-bargaining agreement was extended to Morgan's White Plains facility employees, for all initiation fees, dues and other moneys, if any, paid by or withheld from them pursuant to the terms of said collective-bargaining agreement, in the manner provided in "The Remedy" section above.

(b) Post at its office, meeting halls, and bulletin boards, copies of the attached notice marked "Appendix." 7/ Copies of said notices

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6/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

7/ In the event the Board's Order is enforced by a Judgment of the (Continued)

on forms provided by the Regional Director for Region 2, after being duly signed by Local 814's authorized representative shall be posted immediately upon receipt thereof and be maintained by it for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for Region 2 copies of the attached notice marked "Appendix" for posting by Morgan and Brother-Manhattan Storage Co., Inc., at its place of business in White Plains, New York, in places where notices to employees are customarily posted, if Morgan and Brother-Manhattan Storage Co., Inc., is willing to do so. Copies of said notices to be provided by the Regional Director, after being signed by a representative of Local 814, shall be forthwith returned to the Regional Director.

(c) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Decision, what steps Respondent has taken to comply herewith.

It is further recommended that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

Dated at Washington, D. C.

Leonard M. Wagman
Administrative Law Judge

7/ (Continued) United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

FORM NLRB-4726
(4-71)

APPENDIX

JD-690-75

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT extend or apply, or cause or attempt to cause MORGAN AND BROTHER-MANHATTAN STORAGE CO., INC., to extend or apply to its White Plains facility employees any of the provisions including the union-security provisions, of our collective-bargaining agreement with MORGAN AND BROTHER-MANHATTAN STORAGE CO., INC., or any renewal, modification or extension of that contract, unless and until we have been certified by the Board as the bargaining representative of the White Plains facility employees in a bargaining unit covered by said contract.

WE WILL reimburse all present and former employees at the White Plains facility of MORGAN AND BROTHER-MANHATTAN STORAGE CO., INC., for all fees, dues, fines or other payments to LOCAL 814, which we unlawfully deducted from their pay under the union-security provision of our contract with MORGAN AND BROTHER-MANHATTAN STORAGE CO., INC.

WE WILL NOT in any like or related manner restrain or coerce employees of MORGAN AND BROTHER-MANHATTAN STORAGE CO., INC., either in their right to self-organization, or in their right to form, join, or to refrain from forming or joining unions, and to bargain collectively through representatives of their own choosing.

LOCAL 814, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Morgan and Brother-Manhattan Storage Co., Inc.)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor - Federal Building, 26 Federal Plaza, New York, New York 10007 (Tel. No. 212 - 264-0360).

FILED
Exec. Sec. O.

MJW

223 NLRB No. 71

D--1026
White Plains, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL 814, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Morgan and Brother-Manhattan Storage Co., Inc.)

and

ROBERT DRYERS

Case 2--CB--5729

DECISION AND ORDER

On December 1, 1975, Administrative Law Judge Leonard M. Wagman issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order

of the Administrative Law Judge and hereby orders that the Respondent, Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, White Plains, New York, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. MAR 31 1976

Betty Southard Murphy, Chairman

Howard Jenkins, Jr., Member

Peter D. Walther, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

No. 76-4138

LOCAL 814, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) 3 copies of the APPENDIX in the above-entitled case, on the following counsel of record, this 13 day of August 1976.

Messrs. Cohen, Weiss and Simon
Att: Rosalind A. Kochman, Esquire
605 Third Avenue
New York, N. Y. 10016

ELLIOTT MOORE
Deputy Associate General Counsel
National Labor Relations Board
Washington, D.C. 20570

ABS DUPLICATORS, INC.

Alphonso Smith

1732 Eye Street, N.W.
Washington, D.C. 20006
Telephone: 298-5537

ABS DUPLICATORS INC.
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washington d.c. 20006
(202) 298-5540

August 12, 1976

Clerk,
U.S. Court of Appeals for the Second Circuit
Foley Square
New York, N. Y. 10007

Re:
Case No. 76-4138

Please replace these books for the ones previously furnished. There were some transcript pages inadvertently omitted.

I hope that this does not cause you any inconvenience.

Sincerely yours,

Jack Cawley/nb

Jack Cawley
President